STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	
Petition for approval of delivery services tariffs and tariff revisions and of residential delivery services implementation plan, and for approval of certain other amendments and additions to its rates, terms, and conditions.	:	No. 01-0423

REPLY BRIEF ON EXCEPTIONS OF COMMONWEALTH EDISON COMPANY

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Dated: March 4, 2002

TABLE OF CONTENTS

Page

TABLE OF CONTENTS (*cont'd*)

Page

TABLE OF CONTENTS (*cont'd*)

Page

TABLE OF CONTENTS (*cont'd*)

Page

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Commonwealth Edison Company ("ComEd") submits this Reply Brief on Exceptions in accordance with Section 200.830 of the Illinois Commerce Commission's (the "Commission") Rules, 83 Ill. Adm. Code § 200.830, to respond to the exceptions to the Administrative Law Judges' ("ALJs") Proposed Interim Order (the "Order") filed by the Commission's Staff ("Staff") and other intervenors on February 25, 2002.

INTRODUCTION

The old world of the integrated public utility no longer exists in Illinois and the other states that have adopted restructuring for a competitive electric market. Far from digging in its heels to resist this change, ComEd has embraced the change and has restructured its businesses to provide service in the new competitive environment. ComEd's main theme in this case has simply been that in a competitive market, prices charged for distribution service must be based on the costs of providing the service at a level that meets customer expectations. By and large, the Order understands this and puts into place a rate structure that will foster a genuine competitive market. Many other parties also claim to want real competition, but instead they propose only that ComEd be forced to provide delivery services at subsidized, below-cost rates.

These parties are incorrectly focused on retaining the revenue requirement that was last set based on a 1997 test year, and believe as an article of faith that customers should not be charged for the improvements in ComEd's system and reliability of service since that time because the associated costs must somehow be attributable to imprudence. To the same effect is the fiction that ComEd is still an integrated utility, so that ComEd should fail to recover substantial amounts of its costs -- into some indefinite future -- because the Commission should pretend that these costs are allocable to a phantom of the generation function that existed in the past.

An exceedingly thorough record was compiled in this proceeding and the findings of the Order are based solidly on that record. The Order properly recognizes that ComEd is entitled to an opportunity to recover all of its reasonable and prudently incurred costs. Aside from some misguided arguments about this legal standard, the briefs on exceptions of the Governmental and Consumer Intervenors ("GCI") and the ARES Coalition[†] direct their most heated rhetoric to attacking the Order's finding that the evidence in this Docket to date establishes a basis for determining a just and reasonable revenue requirement for ComEd. GCI and the ARES Coalition replay all their old arguments to the effect that, regardless of what the evidence shows, the outages on ComEd's system in 1999 *must* mean that the costs incurred since then to improve reliability (as well as to meet load growth and inflation) are somehow unreasonable and that ComEd has not sufficiently proved the converse.

GCI makes the spurious argument that the Order should not have included in ComEd's revenue requirement "amounts the Commission found questionable enough to warrant an audit." (GCI Brief on Exceptions ["BoE"] at 8). As GCI knows, the Commission's Order of February 6, 2002, in Docket 01-0664 made no findings as to any of ComEd's rate base additions or test year

[†] AES NewEnergy, Inc. and Blackhawk Energy Services, L.L.C.

expenses being "questionable." The Commission accepted as reasonable a Joint Motion by parties, including ComEd, supporting the performance of an audit and expressly providing that the Commission would determine residential rates on the basis of the record compiled to date in the instant Docket. The Order makes thorough and proper findings on the basis of that record. GCI cannot bootstrap ComEd's agreement to support an audit into a conclusion that the record as it stands will not support the Order's determination of a revenue requirement for residential rates. ComEd agreed to support the audit because it is fully confident that the prudence of its expenditures will be validated through the audit process.

GCI argues that "the Proposed Order accepts the flimsiest of evidence -- unsubstantiated, subjective opinion testimony -- as fully adequate" to demonstrate the reasonableness and prudence of ComEd's capital investments in distribution plant. (GCI BoE at 23). That is mere empty rhetoric. The only failure of proof in this case is the failure of GCI and the ARES Coalition to introduce evidentiary support for their belief -- based solely on blind faith -- that the capital additions made after the 1999 outages were somehow imprudent or would have cost less if the addition had been made earlier. The record contains voluminous factual testimony and data provided by over two dozen ComEd witnesses, including evidence analyzing the planning, project management, and costs of virtually every material capital project, as well as every aspect of test year expenses. The GCI and ARES Coalition witnesses were not able to identify any imprudent cost for any of ComEd's capital additions, and Staff identified only minor issues answered by ComEd.

The Order thus reaches the only conclusion that could reasonably be reached based on this record. The thoroughness of the record is reflected in the thoroughness of the Order, which discusses all the issues and recites all the proof, or as much of it as is necessary to support the

Order's findings: that ComEd proved that its capital additions were "built for a reasonable and prudent cost" and that ComEd showed its test year expenses to be "reasonable and appropriate." (Order at 51, 105). GCI and the ARES Coalition seek to overthrow that reasoned conclusion based on nothing but the repeated speculation that because ComEd said it was undertaking an extensive program to improve service in the wake of the 1999 outages, ComEd's capital additions and test year 2000 expenses *must* be imprudent and any evidence to the contrary must lack credibility. The reliance on flimsy subjective opinion in this proceeding belongs not to the Order, but exclusively to the arguments of GCI and the ARES Coalition.

In a similar vein, the ARES Coalition argues that ComEd's revenue requirement must be inflated by imprudence connected with the 1999 outages because it represents a "dramatic 40% proposed increase in DST revenues over those found by the Commission to be just and reasonable less than two years ago." (ARES BoE at 32). The statistic cited by the ARES Coaltion is misleading, because the uncontradicted evidence shows that over half the increase in question is accounted for by inflation and growth in customers' usage of the system (as reflected in billing determinants) since 1997, the test year used in the previous rate case at Staff's request. Thus, without taking into account any capital additions or increased real cost levels whatsoever, ComEd would be entitled to a substantial rate increase over the Commission's previous determination. In fact, when adjusted for inflation and growth in billing determinants, ComEd is seeking a real increase in jurisdictional distribution charges of about 15%. (*See* Section II.A., *infra*).

Equally misleading is the argument of the ARES Coalition that the rate increase will have a severe customer impact, preventing bundled customers from switching to competitive service and driving current delivery services customers back to bundled service. (ARES BoE at 22). As

noted, the real increase in charges ComEd is requesting is about 15%, not 40%. In addition, the record shows that a substantial portion of this increase will have no effect on ComEd's total charges to delivery services customers. This is so because for delivery services customers whose bills include competitive transition charges ("CTCs"), the increased charges will be offset in whole or in part by reductions in the CTC. To that extent, the increase is simply being funded by reductions in ComEd's own stranded cost recovery. (Juracek Dir., ComEd Ex. 1.0, pp. 20:528-21:533). Customer classes and groups comprising over 90% of ComEd's non-residential customers have positive CTCs, and the CTC is also expected to be positive for the single family non-space heat customers, by far the largest segment of ComEd's residential customers. (Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 6:126-30; 7:143-46, 40:886-41:904, and Att. G; Juracek Sur., ComEd Ex. 41.0, pp. 4:79-81, 13:319-22, 23:538-24:559; ComEd Exs. 41.2-41.5). Thus, for the vast majority of customer classes and groups or the increase in delivery services charges will be offset by a decrease in CTC charges, with the result that ComEd will not receive a large increase in net revenue, especially at the market values for electricity expected in 2002. The increased delivery rates reflect better delivery services, which customers are thus getting at little or no increased total cost, and there is simply no basis for dire predictions that under these circumstances cost based delivery services rates, which is what the Public Utilities Act (the "Act") mandates, will choke off competition.

Staff argues at length that the Order errs in recognizing that in the new world in which ComEd retains only the functions of an energy delivery company, direct assignment of General and Intangible Plant assets and Administrative & General ("A&G") expenses to the distribution function (and use of specific cost-driven allocators where direct assignment is not feasible) is the preferred methodology. The Order concludes, based on extensive testimony and detailed studies,

that ComEd's accounting for and analysis of how actual costs were incurred and to what functions they related produces a better, more accurate allocation than lumping the costs or assets all together and pretending that they should all be distributed in the same ratio as labor. Staff, however, still argues that past use of the labor allocator, when ComEd was an integrated utility, means that it remains the only proper method to functionalize costs in the new world, except that Staff now wants to inflate the allocator further by substituting certain 1999 data for 2000 data. In particular, Staff insists that though ComEd no longer has any generation function, some of ComEd's present assets and expenses must nonetheless be assigned to a generation function. (Staff BoE at 3-8, 10-15). Anything other than this scheme, Staff argues -- no matter how divorced from the real world this scheme may be -- would somehow be unfair to consumers. (*Id*. at 13).

Staff's position is curious. Staff argues, in effect, that notwithstanding that the costs of a delivery services company are shown to be the reasonable and prudent costs of fulfilling the company's only function, which is providing delivery services, the Commission should arbitrarily penalize any delivery services company that used to be an integrated utility. Even though reorganization of integrated utilities is contemplated by the Act, Staff argues that the Commission should impose a regulatory penalty on such reorganizations by pretending that the reorganized company still operates generation and that some of the costs that in fact supported the provision of delivery services should be nonetheless allocated to this phantom generation function. Staff argues that unless the Commission lives in this make-believe world, consumers will pay for the utility's reorganization.

The General Assembly believed that restructuring the electric industry was a good idea, and that even when delivery services companies recovered all their costs of providing delivery

services, consumers would be better off. The fact is that large integrated utilities have certain common functions, and that when these utilities restructure into smaller, single-function companies to serve the new competitive market better, some of those functions must remain with the delivery company. Because these common functions formerly could be shared by the generation side of an integrated utility does not mean that they go away when the utility becomes a delivery-only company, or that they are -- or ever were -- "generation functions." Nor does it mean that a restructured company's delivery services costs are improper, imprudent, or subject to *de facto* disallowance under the guise of "allocation." To the contrary, in this case, ComEd relied on its actual balance sheets and also performed a detailed analysis that assigned and allocated costs to the distribution function in a way that is accurate and reflects reality, unlike Staff's proposed inflated labor allocator. No party identified even a single dollar of General Plant or Intangible Plant in the proposed rate base that was not used and useful in providing jurisdictional delivery services. And, with the limited exception of a small amount of disputed R&D expense and legal fees, no party identified any A&G Expenses in the proposed revenue requirement that were not incurred in order to provide jurisdictional delivery services. To nonetheless impose a regulatory penalty in the guise of "consumer protection" achieves nothing but arbitrary disallowance of legitimate costs of operating a delivery services company. The Order properly rejects such a position.

In the sections that follow, ComEd provides detailed refutation of the many exceptions filed by other parties. In addition to its exceptions, the ARES Coalition filed separate "Replacement Language" ("ARES Exceptoin Order" or "ARES Exc. Order") that, while it purports to be supported by GCI, the Building Officers and Managers Association ("BOMA"), the National Energy Marketers Association ("NEMA"), and Nicor Energy ("Nicor"), in fact

contains material supported and opposed by varying groups of parties. Indeed, significant parts of the proposed "Replacement Language" are directly contrary to positions taken by one of more of these same parties at the hearing, in their post-hearing briefs, and in some cases even in their briefs on exceptions. Moreover, a number of the proposed "replacements" are not supported by, or even referenced in, any briefs on exceptions, let alone the record. Far from being an integrated proposal, the "Replacement Language" is an unsupported collection of previously-rejected suggestions. ComEd has made no attempt to refute all of the statements with which it disagrees, but has limited its refutations to material errors, and to demonstrating that the record requires acceptance of the findings and conclusions of the Order discussed herein.

ARGUMENT

I.

Legal Issues and Standards for Decision

At the outset of Section I of its brief on exceptions, the ARES Coalition claims that the Commission should apply three "guiding principles" in its decision. (ARES BoE at 13). The ARES Coalition first states that "the Commission has an obligation to set just and reasonable rates, based upon substantial evidence in the record." (*Id*). Although this proposition is generally correct, the ARES Coalition's subsequent assertion that ComEd has not met its burden of proof (*id*.) most certainly is not. In fact, as the Order recognizes, ComEd has offered more than "substantial evidence" to prove that its proposed rates are just and reasonable. (Order at 104). No party has demonstrated anything to the contrary. (*Id.* at 25).

The ARES Coalition also claims that the Commission has "an obligation to preserve the integrity of the fact-finding process." (ARES BoE at 13). The integrity of the Commission's fact-finding process is not at issue in this proceeding. The touchstone of an honest fact finding process is the Commission's and its ALJs' consideration of the sworn testimony and the other

admitted evidence, tested through cross-examination and the hearing process, and, based on that record, their determination of the facts. ComEd could not support that process more. During the hearing, ComEd submitted thorough proofs of its costs and of their reasonableness and prudence, well in excess of those proofs properly accepted in any prior case or for any other utility. It is both unjust and irresponsible for opponents now to suggest that because their presuppositions were not borne out, the process must have been tainted.

The ARES Coalition's assertion that ComEd was not "forthcoming" in discovery (ARES BoE at 13) is equally groundless. ComEd was, in fact, extremely forthcoming. It answered literally thousands of questions posed through data requests and produced voluminous information and documents. For example, ComEd produced over 30,000 pages of documents regarding just the distribution capital projects it constructed from 1998 to 2001. That other parties were dilatory in pursuing discovery -- *e.g.*, GCI waited for nearly two months after ComEd filed and served its petition, tariffs, and direct testimony before serving any data requests on ComEd -- does not in any way suggest that ComEd was not forthcoming. Nor can there be any such suggestion from the failure of other parties' witnesses to review the detailed material that ComEd produced. (ComEd Reply Br. at 4-5).

Finally, the ARES Coalition asserts that the Commission "has been directed to promote the development of the competitive market," citing 220 ILCS 5/16-101A(d), and claims that ComEd's proposal will be "contrary" to this "directive to promote competition" and will harm especially non-residential customers. (ARES BoE at 13). These assertions have no merit. Fundamentally, the ARES Coalition's position mischaracterizes Section 16-101A(d), and removes it from the context of the Act, and even the 1997 amendments of which it was a part. The General Assembly gave the Commission several goals -- including safety, reliability,

recovery of "stranded costs" and delivery services costs, and development of a market that operates efficiently -- of which the ARES Coalition cites just one. *See* 220 ILCS 5/1-102, 16-101A. The General Assembly also determined how best to promote efficient, effective competition, and gave voice to those determinations in the detailed provisions of the Act governing many facets of this case. Adopting below-cost delivery services rates to subsidize competitors was not among the schemes the General Assembly favored, or even found to be permissible.

Moreover, the evidence established that ComEd's proposal will promote efficiency, support the reliable delivery system required for competition, and "get the price right," which, in turn, fosters effective competition. (ComEd Init. Br. at 105; Order at 18-19; ComEd BoE at 53 (collecting the evidence)). The Order follows the record by concluding that "ComEd's residential delivery services rates as proposed, and modified herein, would promote efficient competition and would not have an adverse effect on the development of a competitive market." (Order at 20).

The record clearly establishes that ComEd's proposal will not harm customers, including the non-residential customers on whom the ARES Coalition focuses. For instance, ComEd presented studies demonstrating that customer classes and groups comprising over 90% of non-residential customers will have positive CTCs under ComEd's proposal, and that for these classes and groups, the CTC fully offsets any change, as discussed in the Introduction, *supra*, and Section I.C.1, *infra*. Furthermore, in the long run, all customers, residential and non-residential alike, will benefit from ComEd's proposed rates, as they are set correctly to recover prudently incurred costs fully , without needless subsidies, and therefore to promote efficiency and reliability.

As explained above, none of the sweeping "principles" set forth by the ARES Coalition at the beginning of Section I of its Brief on Exceptions provides any reason, grounded in the record, to modify the Order.

A. Substantive Standards and Policies Governing Requested Rates

Section I.A of the Order, set forth on pages 7-10, discusses "Substantive Standards and Policies Governing Rates." Section I.A, in many respects, parallels certain legal discussions near the front of the Order in Docket 99-0117, but Section I.A has been updated and tailored to address the particulars of the instant Docket. *Commonwealth Edison Co.*, Docket 99-0117, pp. 5-9 (Order August 26, 1999). Staff, GCI, and the ARES Coalition take various exceptions to Section I.A, and the ARES Coalition also includes an "Executive Summary" in its Brief on Exceptions that in several respects bears on legal matters addressed in whole or in part in Section I.A. (Staff BoE at 1-3; GCI BoE at 2-3; ARES BoE at 2-22; ARES Exc. Order at 11-15). None of their substantive exceptions is well-taken.

The third full paragraph on page 7 of the Order, which is the first full paragraph of Section I.A., states:

> As in any contested rate proceeding, this order must be within the Commission's jurisdiction and authority, must lawfully implement the substantive mandates the General Assembly stated in the Act, and must be based exclusively on the evidence in the record. 220 ILCS 5/10-103, 10-201(e)(iv); *BPI 1989*, 136 Ill. 2d at 201, 227, 555 N.E.2d at 697, 709. The Act requires the Commission to approve only those rates that are cost based and that provide for full recovery of utilities' prudent costs of providing delivery services from the customers that take those services. 220 ILCS 5/16-108. Further, and as the Company correctly states, ComEd bears the burden of proof that its proposed new and revised delivery services tariffs are just and reasonable. 220 ILCS 5/9-201(c).

(Order at 7). The second full paragraph on page 9 of the Order states:

> To be clear, ComEd is entitled to the opportunity to obtain full recovery of its revenue requirement. However, in those instances where the Company would

> seek recovery for costs which are not determinable with particular certainty, then in those instances we would agree with Staff and disallow such a recovery.

(Order at 9).

Staff, GCI, and the ARES Coalition all object, in somewhat varying respects, to the above two paragraphs -- based in part on these parties' failure to read accurately or fairly those paragraphs standing alone or in context -- and propose various modifications. Their objections and proposals, in all relevant and material respects, are unwarranted.

Staff begins by arguing that the Order "fails to accurately quote the Act and sufficiently convey the fact that the burden of proof is on [ComEd] to show that its proposed rates are just and reasonable. Staff claims that the Order erroneously accepts ComEd's argument that the provisions of Section 16-108(c) of the Act create a right in ComEd to "'fully recover' its costs of providing delivery services." (Staff BoE at 1). Staff goes on to argue that: (1) only prudent, just, and reasonable costs are recoverable; (2) the utility bears the burden of proving its costs are prudent, just, and reasonable; (3) the utility is not necessarily entitled to "full" recovery of its costs or alleged or projected costs; (4) the only way to guarantee "full" recovery would be a rider; and (5) the Commission must take into account "customer impacts." (Staff BoE at 1-2). Staff proposes replacing the second sentence of the third full paragraph on page 7 of the Order with a partial quotation of part of Section 16-108(c). Staff also proposes several edits to the second full paragraph on page 9 of the Order.

Staff's arguments are partly right, partly incomplete, and partly wrong.

- The Order's language, quoted above, expressly refers to the requirements of prudence and justness and reasonableness, and the burden of proof. The Order does not misstate those points.

- ComEd agrees with the general principles that it may recover through its jurisdictional revenue requirement costs that are prudent and reasonable, and that it may not recover incremental costs that it never would have incurred but for imprudence on its part. *E.g.*, 220 ILCS 5/9-201(c); 220 ILCS 5/16-108(a), (c),

(d); *Central Illinois Light Co.*, Docket 94-0040, 1994 Ill. PUC Lexis 577 (Order Dec. 12, 1994). Nothing in the Order says otherwise.

- ComEd also agrees that it bears the burden of proof of its costs. However, Staff has not accurately or completely stated what constitutes a *prima facie* case, the scope of the presumption of reasonableness, or other parties' burden of going forward with the evidence. "Once a utility makes a showing of the costs necessary to provide service under its proposed rates, it has established a *prima facie* case, and the burden then shifts to others to show that the costs incurred by the utility are unreasonable because of inefficiency or bad faith." *City of Chicago v. People of Cook County*, 133 Ill. App. 3d 435, 442-43, 478 N.E.2d 1369, 1375 (1st Dist. 1985). The utility does not have the burden of disproving in advance all other issues conceivably relevant to the reasonableness of its rates. *Id.* at 442, 478 N.E.2d at 1375.[†]

- Staff says that Section 16-108(c) does not literally mandate "full" cost recovery when it directs that delivery services rates be "cost based" and "shall allow the electric utility to recover the costs of providing delivery services.…" Given that the rates "shall" allow ComEd to recover its costs, arguing about the absence of the word "full" is purely semantic and of no significance. The Act clearly does not permit denial of cost recovery in whole or in part. Moreover, the Commission confirmed in its Response Brief in *Commonwealth Edison Co. v. Illinois Commerce Comm'n, et al.*, Nos. 2-00-0275/0375, p. 17, that "utilities are indeed entitled to the opportunity to obtain full recovery of their revenue requirements…." GCI and the ARES Coalition make a similar confirmation, as shown below.

- Staff's third argument above, like the Order, slightly confuses the discussion by mixing in the standard for *pro forma* adjustments and by partially misstating that standard, which ComEd has proposed to correct -- there is no "particular certainty" standard for either costs in general or *pro forma* adjustments. (ComEd BoE at 6-7).

- The Order does not state, and ComEd has not argued, that ComEd is entitled to a "guarantee" of full recovery of its costs in the sense of a rider. It is, however,

[†] Utilities are entitled to a rebuttable presumption that the costs of constructing and installing plant needed to provide service are reasonable, a presumption that has been eliminated only as to those generation plant construction costs subject to mandatory audit under Section 9-213 of the Act, 220 ILCS 5/9-213. *See City of Chicago*, 133 Ill. App. 3d at 442-43, 478 N.E.2d at 1375; *The Peoples Gas Light and Coke Co.*, No. 91-0586, 1992 Ill. PUC Lexis 376 at **152-154 (Order Oct. 6, 1992); *In re North Shore Gas Co.*, No. 91-0010, 1991 Ill. PUC Lexis 636 at **125-127 (Order Nov. 8, 1991). *See also The People ex rel. Hartigan v. Illinois Commerce Comm'n*, 117 Ill. 2d 120, 133, 510 N.E.2d 865, 870 (1987) (presumption of reasonableness of costs eliminated as to generation plant construction costs subject to mandatory audit under Section 9-213). ComEd met its burdens here without regard to this presumption, but the legal point remains.

entitled to a rate designed to recover fully its costs given the billing determinants used to design the rate.

- Finally, Staff's implied inference regarding the "customer impacts" language of Section 16-108(d) is incorrect. Customer impacts are to be taken into account in rate design, but are not a reason for denial of cost recovery. *See* Section I.C.1, *infra*.

Thus, Staff has shown no valid ground for amending the third full paragraph on page 7 of the Order, although ComEd has no objection if the Commission wishes to add (not substitute) the statutory language Staff wishes quoted here (which already is quoted elsewhere in the Order, such as on page 18). Staff has shown no valid ground for amending the second full paragraph of page 9, although ComEd has shown that it should be modified. (ComEd BoE at 6-7).

GCI also objects to the above described "full" recovery language, but GCI simply has misanalyzed the Order and ComEd's positions and then gallantly attacked the resulting windmills. (GCI BoE at 2-3). GCI admits that ComEd has a right to an opportunity to recover its jurisdictional revenue requirement. (GCI BoE at 3; ARES Exc. Order at 13). GCI, like Staff and the Order, then goes on to confuse general principles with a misstatement of the *pro forma* adjustments standard. (*Id*.) GCI's objections are without merit.

GCI's proposed language for Section I.A, which is the same as the ARES Coalition's proposed language, is unwarranted, in any event. GCI requests that the second sentence of the third full paragraph on page 7 of the Order be amended by striking the words "full" and "prudent" and adding the words "prudently incurred and just and reasonable." (ARES Exc. Order at 11). That makes no sense. The latter addition means that the word "full" should remain. To the extent GCI actually is arguing that ComEd is not even entitled to full recovery of its prudent, just, and reasonable costs, that flies in the face of the Act and the underlying constitutional law. 220 ILCS 5/9-201(c), 16-108(a), (c), (d); *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944);

Bluefield Waterworks v. Public Service Comm'n, 262 U.S. 679 (1923). GCI also proposes additions and modifications to the language on page 9 of the Order. (ARES Exc. Order at 13). However, GCI has mixed characterizations of its own arguments and proposed Commission conclusions, and correct and incorrect material in a basically inseparable manner, such as by pursuing the unsupported and false idea that "customer impacts" could be grounds for reducing cost recovery instead of for changes in rate design. (*Id.*; *See* Section I.C.1, *infra*).

The ARES Coalition offers arguments similar to those of GCI on the subject of "full" cost recovery and the burden of proof, none of which is availing, for the reasons shown above. (ARES BoE at 7, 20-21). The ARES Coalition also tosses off a variety of other arguments that relate to the legal matters addressed in Section I.A of the Order. (ARES BoE at 14-21; *see also id.* at 1-14). However, the ARES Coalition proposes only the same changes in Section I.A as does GCI, as noted above. (ARES Exc. Order at 11, 13). Thus, the ARES Coalition's exceptions should be rejected both because they are wrong and because their proposed language is not valid.

Although the ARES Coalition's other arguments also thus fail to justify changes to Section I.A, ComEd believes that some of them should nonetheless be addressed here. The ARES Coalition once again asserts that ComEd may not request, and the Commission may not order, a non-residential rate increase in this Docket. (ARES BoE at 14-18). Staff, Illinois Power Company ("IP"), ComEd, the ALJs, and the Commission all have refuted and rejected that argument. It is difficult to imagine a more disingenuous and demonstrably false legal argument, as illustrated by the fact that the two remaining members of the ARES Coalition filed three briefs in Docket 99-0013 where they expressly argued that a utility may petition for a non-residential delivery services rate increase at any time. The Supreme Court has made clear that Article IX of

the Act, 220 ILCS 5/9-101, *et seq.*, allows utilities to file for rate revisions, including rate increases, at any time. The Court has held that after the Commission issues a decision setting rates, a utility:

> is free, anytime thereafter, to file for another rate increase, if it feels it has some basis for an increase. The Act does not limit the number of times a utility may file for a rate increase within a particular period of time.

Business & Professional People for the Public Interest v. Illinois Commerce Comm'n, 136 Ill. 2d 192, 208-09, 555 N.E.2d 693, 700 (1989). Nothing in Article XVI of the Act, 220 ILCS 5/16-101, *et seq.*, changes that result. Section 16-108(b) of the Act, 220 ILCS 5/16-108(b), could not be clearer. That Section, directed expressly to delivery services tariffs, provides:

> The Commission shall enter an order approving, or approving as modified, the delivery services tariff no later than 30 days prior to the date on which the electric utility must commence offering such services. <u>The Commission may subsequently modify such tariff pursuant to this Act</u>.

220 ILCS 5/16-108(b) (emphasis added). The ARES Coalition's tortured legal arguments are transparent nonsense, as has been shown in several separate briefs filed by Staff, IP, and ComEd, respectively. (*E.g.*, ComEd's Response to the Joint Movants' Verified Petition for Interlocutory Review of the ALJ's Denial of Their Motion to Strike, filed Nov. 28, 2001). The ARES' Coalition's Brief on Exceptions offers no reason why the Commission should retreat from its previous decision to reject the ARES' Coalition's meritless argument.

The ARES Coalition also cite three short quotations, all from outside the context of this Docket and that principally discuss the aggregate impact of the bundled rate freeze and the CTC offset on ComEd's revenues, as evidence that ComEd's delivery services rates are frozen. The quotes do not support the ARES Coalition's position and, even if they did, they could not and would not change the fact that the Act clearly gives ComEd the authority to seek updated delivery services rates.

The ARES Coalition, once again, distorts the law by also asserting that some of the Act's legislative findings constitute a "direction" or "mandate" that the Commission promote competition, without regard to the balance of the Act. (ARES BoE at 13, 14, 19). That is false, the contrary already having been shown a host of times in this and prior Dockets. For example, in its September 28, 2001, response to the "Joint Motion to Strike" of the ARES Coalition, BOMA, and NEMA, ComEd pointed out (at 15-16) out that:

> The Movants' disdain for the law also is reflected in their repeated selective citation and characterization of the legislative findings of the restructuring legislation here and in their testimony, attempting to convince the Commission that such findings vest the Commission with jurisdiction or authority and impose requirements on the Commission. ("Motion to Strike", pages 9, 10). The Movants do not fairly and completely characterize the legislative findings, and, even more importantly, they disregard the well-established law under which the findings do not vest the Commission with jurisdiction or authority and do not impose mandates or other requirements on the Commission.
>
> The Commission only has those powers given it by the General Assembly through the Act, and no requirement to be imposed on public utilities can be read into the Act by intendment or implication. *BPI*, 136 Ill. 2d at 201, 555 N.E.2d at 697 (1989); *Turgeon v. Commonwealth Edison Co.*, 258 Ill. App. 3d 234, 251, 630 N.E.2d 1318, 1330 (2d Dist.), *appeal denied*, 157 Ill. 2d 524, 642 N.E.2d 1305 (1994). There can be no dispute that the legislative intent and finding provisions do not expand the jurisdiction or authority of the Commission or otherwise function as operative provisions of the Act. *E.g., Citizens Utility Board v. Illinois Commerce Commission*, 166 Ill. 2d 111, 126, 651 N.E.2d 1089, 1097 (1995) ("The function of a statutory preamble is to supply reasons and explanations for the legislative enactments.").
>
> The Movants also conveniently overlook those legislative findings that do not suit them. For example, the General Assembly found, in Section 16-101A(c) of the Act, 220 ILCS 5/16-101A(c), that:
>
> > With the advent of increasing competition in this industry, the State has a continued interest in assuring that the safety, reliability, and affordability of electrical power is not sacrificed to competitive pressures, and to that end, intends to implement safeguards to assure that the industry continues to operate the electrical system in a manner that will serve the public's interest. Under the existing regulatory framework, the industry has been encouraged to undertake certain investments in its physical plant and personnel to enhance its efficient operation, the cost of which

> it has been permitted to pass on to consumers. The State has an interest in providing the existing utilities a reasonable opportunity to obtain a return on certain investments on which they depend in undertaking those commitments in the first instance while, at the same time, not permitting new entrants into the industry to take unreasonable advantage of the investments made by the formerly regulated industry.

220 ILCS 5/16-101A(c).

Moreover, while the Movants quote ("Motion to Strike", page 10) an excerpt from Section 16-101A(d) of the Act, 220 ILCS 5/16-101A(d), they fail to take into account that even that excerpt expressly supports, among other things, development of a retail electricity market "that operates efficiently…." (Emphasis added). As ComEd has shown in its testimony filed to date, and will show in the remaining development of the evidentiary record, ComEd's proposals are essential in order for the retail electric market to operate efficiently within the strictures of the operative provisions of the Act and the applicable constitutional principles.

The Movants would read the legislative findings of the Act without regard for its actual operative provisions when that suits their interests. For example, as noted earlier, one of the actual operative provisions of the Act, Section 16-108(c), 220 ILCS 5/16-108(c), entitles ComEd to fully recover its costs of providing delivery services and to "cost based" rates. Yet, the Movants would have the Commission rely on the legislative findings -- as well as "policy reasons" not based on any statutory provision -- as a basis for violating those provisions of Section 16-108(c).

Enough said.

The ARES Coalition also, among other things:

- Argues for a non-residential rate increase phase-in and what it characterizes as the maintenance of "rate continuity" (ARES BoE at 10, 21-22), even though, among other things, there is no lawful basis for that proposal, it violates Section 16-108(c), and it ignores that this case involves non-residential rates that will not go into effect until more than two years after the test year anyway;

- Argues that ComEd may recover only costs of providing jurisdictional delivery services through its jurisdictional revenue requirement and therefore may not recover legally mandated costs that ComEd incurs because it provides delivery services (ARES BoE at 18-19), even though that theory, if taken literally, conceivably would call into question things like the recovery of taxes through delivery services rates; and even though that obviously would not be just and reasonable and ultimately would be disastrous. The ARES Coalition ignores that the Supreme Court has held that utilities are entitled to recover expenses, like

taxes, that are legally mandated, and that paying such expenses benefits customers by allowing the utility to remain in business and continue providing service (*Citizens Utility Bd. v. Illinois Commerce Comm'n*, 166 Ill. 2d 111, 120-24, 651 N.E.2d 1089, 1094-97 (1995));

- Notes the provision of Section 16-108(d) regarding voltage level differences, but argues against ComEd's more than amply justified high voltage delivery services credit (ARES BoE at 21, *et seq.*; *see* Section II.G.8, *infra; see also In re Commonwealth Edison Co.*, Docket 99-0117, pp. 50-51 (Order Aug. 26, 1999));

- Notes the provision of Section 16-108(d) regarding customer impacts (ARES BoE at 12, 19-20), but distorts that provision and the evidence in the record on that subject beyond recognition, while falsely claiming that the Order ignored the customer impacts (Order at 8, 9, 11-15; *see* Section I.C.1, *infra*); and

- Makes varying proposals on various issues that ComEd should be required to consult or participate in workshops with Staff and sometimes other potential adverse parties regarding various aspects of ComEd's general ledger, other books and records, and ComEd's internal analysis of issues and proposals and its preparation of studies and other materials and information in anticipation of a future ComEd rate filing (*e.g.*, ARES BOE at 3, *et seq.*; ARES Exc. Order at 28-29, *et seq.*) The ARES Coalition's proposal ignores the scope of this Docket -- ComEd's currently proposed tariffs. It also ignores the appropriate and useful scope of informal cooperation and workshops, while infringing on ComEd's rights. ComEd has willingly and enthusiastically participated in a variety of workshops about business and implementation issues, and will continue to do so. But, ComEd also has an absolute right to analyze, formulate, and initiate its proposed tariffs and tariff amendments and supporting filings when and on what terms and conditions ComEd believes to be just and reasonable, *e.g.*, 220 ILCS 5/9-201; *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 208-09, 555 N.E.2d 693, 700 (1989); *Lowden v. Illinois Commerce Comm'n*, 376 Ill. 225, 231, 33 N.E.2d 430, 434 (1941). Proposals to create more satellite proceedings also ignore the extent to which Staff can and does obtain needed information from ComEd by request and through its field audit, as well as the lack of Staff complaints about its ability to obtain information about and from ComEd's general ledger and other books and records, as discussed in Sections II.C.2, II.D.3.a, and II.D.3.b, *infra.* Far from helping matters, creating various ancillary proceedings in advance of a future rate case -- the timing and contents of which are not yet known -- will increase parties' expense, create additional litigation, and ultimately complicate, not simplify, any future rate case.

The ARES Coalition plainly has shown no grounds for altering Section I.A of the Order or for the above proposals to the extent that they are reflected elsewhere in the ARES Coalition's Brief on Exceptions and the ARES Exceptions Order.

B. Procedural Issues (*e.g.* Admissibility) Not Addressed in Specific Arguments

GCI argues that the Commission should not have granted ComEd's requests for confidential treatment of documents during the course of this proceeding. (GCI BoE at 4). It contends that the Commission should enter a clarifying opinion adopting two standards for according confidential treatment to documents in the future – one for documents entered into the record in Commission cases and one for documents produced in discovery. Neither of the standards proposed by GCI is in accordance with Illinois law, and the Commission should adhere to its decision to follow Illinois law in this and in future cases. (Order at 10-11).

For documents entered into the record in a Commission proceeding, GCI argues that confidential treatment should be provided only if the Freedom of Information Act ("FOIA") factors discussed in *Cass Long Distance Services*, Docket No. 98-0060 (Reopen), 1999 Ill. PUC LEXIS 206 (Order March 10, 1999) are satisfied. As the briefs previously filed by ComEd establish, FOIA standards are not applicable when deciding whether to grant confidential treatment in adjudicated proceedings of this type. The *Cass* case dealt with an entirely different situation in which a party sought confidential treatment for routine annual reports that had already been filed with the Commission and which were already public documents. The Act specifically provides for the protection of confidential and proprietary information (220 ILCS 5/4-404), and contains no exception excluding utility data from this protection.

For documents produced in discovery, GCI contends that no confidential treatment should be provided without the introduction of testimony concerning the documents. Specifically, GCI argues that it is improper to rely on arguments of a party's counsel about the reasons for providing confidential treatment. That position is in direct conflict with Illinois law, as confirmed by the affidavit of Judge John N. Hourihane, a retired Justice of the Illinois

Appellate Court with many years of experience as a trial judge, as well. Judge Hourihane testified that, when considering whether commercial information should be subject to a protective order, the Illinois courts "will review the documents or the information, listen to the arguments of counsel and make a determination whether public disclosure could create a possibility of commercial disadvantage to the disclosing party." (Hourihane Affidavit, Ex. A. ¶ 6). That is exactly the procedure that was followed in this proceeding, and it conforms precisely to the requirements of Illinois law. Contrary to the suggestion of GCI that confidential treatment for ComEd's sensitive business information is unusual, Judge Hourihane confirmed that protective orders are a routine part of practice in the Illinois courts and that "they are entered by Judges of the Law Division and the Chancery Division of the Circuit Court of Cook County on a daily basis." (Hourihane Affidavit, Ex. A. ¶ 5).

In summary, the Commission applied the correct legal standard in this case and GCI's request for an advisory opinion establishing new standards, in conflict with Illinois law, for future cases should be rejected. The Illinois courts have made clear that the decision whether to grant confidential treatment "depends on the facts of the particular case," not on FOIA standards or other rigid requirements of the type that GCI seeks to impose. *May Centers, Inc. v. S.G. Adams Printing and Stationery Co.*, 153 Ill. App. 3d 1018, 1021-23, 506 N.E. 2d 691, 694-95 (5th Dist. 1987).

C. Other Policy Issues

1. Impact on Customers

The ARES Coalition claims in its brief on exceptions (at 22-24) that ComEd's proposal will lead to a number of negative customer impacts. None of these claims has merit. At their core, they fail because they stem from the ARES Coalition's fundamentally flawed "customer impact analyses." These analyses are based on a tiny, biased sample, and they depend on highly

unrealistic assumptions about market values. (*See* ComEd Init. Br. at 32-33). In light of these critical defects, the ARES Coalition's attempts to defend its "analyses" (ARES BoE at 22-24) are to no avail.

The ARES Coalition's assertion that its analyses are the "only hard evidence" regarding the impact of ComEd's proposal (*id.* at 22) is utterly false. The Coalition's analyses, with their fundamental flaws, of course in no way constitute anything remotely close to "hard evidence." Even if they did, they most certainly would not be the "only" customer impact analyses. Indeed, despite the ARES Coalition's misrepresentation to the contrary (*id.*), ComEd did in fact assess the impact of its proposal on customers in detail. For instance, as explained in ComEd's initial brief (at 31-33), ComEd presented studies showing that well over 90% of its non-residential customers are in customer classes or groups that will have positive CTCs, even under ComEd's initial proposed jurisdictional revenue requirement. For these classes and groups, the CTC fully offsets any change.[†]

The ARES Coalition also claims that ComEd's proposal "will drive many current delivery services customers back toward or even onto bundled services by reducing the level of savings available for such customers." (ARES BoE at 22). This claim fails in several respects. For starters, it can be disregarded on its face because it, too, depends on the ARES Coalition's fundamentally flawed analyses. Moreover, the suggestion that customers will be driven back to

[†] Thus, the ARES Exceptions Order's proposed additional language describing the ARES Coalition's alleged contention that ComEd's failure to perform customer impact studies or "meaningfully criticize" the ARES Coalition's analyses means that ComEd has not met its burden of proving that its proposed rates are just and reasonable (ARES Exc. Order at 19) is wholly unjustified. Not only did ComEd present detailed studies regarding customer impacts, but it also proved that the ARES Coalition's analyses were of no value. Moreover, ComEd proved that its proposed rates are just and reasonable (DeCampli Dir., ComEd Ex. 6.0, pp. 4:57-19:406; ComEd Ex. 6.1; Helwig Dir., ComEd Ex. 19.0, pp. 6:117-27, 7:142-8:163; Hill Sup. Reb., ComEd. Ex. 38.0 CR, pp. 3:61-70; 36:847-52; DeCampli Dir., ComEd Ex. 6.0, pp. 16:326-17:362; Voltz Dir., ComEd Ex. 5.0, pp. 16-332-23:485; DeCampli Dir., ComEd Ex. 6.0, pp. 1:14-17, 19:408-23:480), and no party proved otherwise (Order at 25).

bundled rates is exaggerated: as a result of the CTC offset, most customers who would achieve savings by electing to take delivery services under present rates and terms, will continue to achieve savings under the rates and terms proposed by ComEd in this case. (Juracek Reb., ComEd Ex. 20.0, pp. 24:587-25:599). Simply stated, the economics will not change dramatically as a result of ComEd's proposals, and customers will continue to participate in open access. In any event if the true cost of unbundled services in the year 2000 is more than the frozen 1995 bundled rates (in some cases, less an additional 20%) for a small group of customers, then that is not evidence of harmful customer impacts. (Juracek Sur., ComEd Ex. 41.0, p. 26:610-21). Customers are entitled to compare and choose the best option allowed under the Act; indeed, exercising this choice is of the essence of the 1997 amendments to the Act.

In addition, the record shows that widespread loss of savings is unlikely. Even under ComEd's initial proposed jurisdictional revenue requirement (and, in fact, even under ComEd's now dismissed proposed FERC transmission revenue requirement), the current status of forward market prices and projections yields similar if not even more favorable results in terms of positive CTCs, including a positive CTC for the largest residential customer class. (Juracek Sur., ComEd Ex. 41.0 CR, pp. 13:317-24, 14:355-15:363, 23:538-24:559, ComEd Exs. 41.2, 41.3, 41.4, 41.5). In any event, even were some customers to lose savings opportunities because of high market prices, that would not be a reason to reduce delivery services rates. The idea of open access is to show customers real costs and real prices, not to gin up interest in higher cost power by setting delivery rates below cost.

As a result, the ARES Coalition's assertion that "ARES cannot build an effective competitive market in Illinois if opportunities are limited to small and medium sized non-residential customers" (ARES BoE at 23) has no foundation. Nothing suggests such a limitation.

In fact, the record shows that ComEd's proposal would promote competition, as have so many of ComEd's efforts during recent years. (Makholm Reb., ComEd Ex. 34.0, pp. 15:359-16:373; Juracek Reb., ComEd Ex. 20.0, pp. 17:433-35). In addition, and consistent with the record, the Order properly concludes in Section I.C.3 (at 20) that the tariffs being approved "would promote efficient competition and would not have an adverse effect on the development of a competitive market."

The ARES Coalition also lists a bunch of points challenging the CTC offset and making various claims about saving reductions. (ARES BoE at 23-24). None of these points has any merit. They all can be disregarded on their face, as they stem from one of the ARES Coalition's fatally flawed analyses. Moreover, as discussed above, ComEd presented studies showing that over 90% of its non-residential customers are in customer classes or groups that will have positive CTCs, even under ComEd's initial proposed jurisdictional revenue requirement, and such CTCs will fully offset any change. In addition, as also discussed above, widespread reductions in savings are unlikely, and, in any event, even were some customers to lose savings opportunities because of high market prices, that would not be a reason to reduce delivery services rates.

Furthermore, with respect to at least two of the points about alleged reductions in savings (the second and third points in the list), the ARES Coalition assumes both ComEd's proposed transmission revenue requirement and a full revenue increase taken across the board instead of subject to ComEd's rate design changes. (ARES BoE at 23). Neither of these assumptions is appropriate. As the ARES Coalition recognizes (*id.*), FERC terminated ComEd's transmission rate case on December 21, 2001. *Alliance Companies, et al.*, 97 FERC para. 61,327 (December 20, 2001). The ARES Coalition nevertheless claims that ComEd "could re-file a similar

request." (ARES BoE at 23). This claim, while literally true, is nothing more than speculative. It also is irrelevant: this proceeding concerns Illinois jurisdictional delivery services, not FERC jurisdiction transmission services. If ComEd decides at some point to file another transmission rate case, it has every right to do so, and, if it proves that its proposed rates in such a case are proper, it should be entitled to them. That is, ComEd's seeking an appropriate increase in its transmission revenue requirement is not a valid reason for denying it the appropriate cost recovery and cost based rates mandated by the Act in this proceeding. (Juracek Sur., ComEd Ex. 41.0, p. 17:405-12). Further, the record shows that even if FERC had approved ComEd's proposed rates (instead of dismissing the case), the impact would have been very limited. (*See* ComEd Init. Br. at 32).

The ARES Coalition's assumption about a full revenue increase across the board without ComEd's proposed rate design changes is invalid, as well. ComEd is not proposing such a full revenue increase across the board. Moreover, the record shows that the proposed rate design changes are justified. (ComEd Init. Br. at 109-38). ComEd's rate design decisions are revenue neutral, and thus its only goal with such decisions is to treat customers fairly, while dividing the costs of delivery services among customer classes. The rate design proposals that ComEd has made – including the annual demand ratchet and Rider HVDS – were advanced to reduce cross subsidies among customer groups that otherwise would result. That is an important goal, and ComEd's efforts to achieve it are appropriate and uninfluenced by any competing self-interest.

In addition, the ARES Coalition's final point in its list – which asserts that "[t]he types of customers that would experience the greatest increase are the types of customers that present significant opportunities for savings under the existing delivery services rates" (ARES BoE at 24) – is not only inherently flawed and incorrect for reasons cited above, but also telling about

the ARES Coalition's real goal here. As discussed in more detail in Section I.C.3, *infra*, this point concerns what the ARES Coalition asserts will be a shift in the "structure of savings" among customers if ComEd's proposal is adopted. (ARES BoE at 26). The ARES Coalition wants the Commission to reject such a shift, and instead maintain existing rates – theoretically indefinitely – to subsidize the Coalition, even though the Coalition itself recognizes that the alleged shift in savings "may seem fair" (*id.*), and even though maintaining the status quo would mean denying ComEd its rights to cost based rates and full cost recovery. This self-serving, anti-customer, and illegal suggestion should be rejected.

The ARES Coalition requests modification of the Order in two respects. (ARES BoE at 24). Neither should be adopted. The first request is to reject ComEd's rate design changes. (*Id.*) As noted above, however, those changes are justified, and therefore should be implemented. The ARES Coalition's second request – "adopt[] a phase-in of any increase in rate base, without carrying charges with no more than half of the increase being introduced into delivery services rates prior to their reflection in bundled rates" (*id.*) – is completely unwarranted, as discussed in Section I.A, *supra*, and Section I.C.4, *infra.*

The ARES Exceptions Order (at 17-24) proposes larding up Section I.C.1 with a host of unwarranted changes. These proposed changes should be rejected in their entirety. The vast majority of them reflect the ARES Coalition's arguments discussed above, and therefore should be rejected on the same grounds as such arguments. The remaining ones have no merit, for some of the same reasons cited above, as well as for others. For example:

- "The ARES Coalition notes the agreement of ComEd witness Juracek with the methodology used in the ARES Coalition's analyses" (ARES Exc. Order at 19) – this citationless assertion is just false, as Ms. Juracek by no means agreed with such methodology, and, as discussed above, such analyses are in any event fundamentally flawed;

- "the Commission cannot fulfill its statutory duty to balance the competing interests of stockholders and ratepayers without considering the impact of proposed rates on a utility's customers" (citing *Citizens Utility Bd. v. Illinois Commerce Comm'n*, 276 Ill. App. 3d 730, 737, 658 N.E.2d 1194, 1200 (1st Dist. 1995)) (ARES Exc. Order at 19) - yet this case shows that customer impacts are to be taken into account for determining rate design, not for reducing cost recovery, and, in any event, ComEd provided the Commission with significant evidence, on multiple levels, regarding the impact of its proposed rates (*see* ComEd Init. Br. at 29-35), and the Order (at 11-15) clearly considers this issue;

- "The Company did not include in its pre-filed direct testimony any analysis to support its assertion that there would be minimal, if any, impact on residential and non-residential customers, because any increase in delivery services rates would be offset by commensurate reductions in CTCs" (ARES Exc. Order at 22) – this citationless statement is false, too, as ComEd provided just this sort of analysis in Attachment G to the direct testimony of Lawrence Alongi and Sharon Kelly (Alongi-Kelly Dir., ComEd Ex. 13.0 CR, Att. G);

- "The Company, in it[s] surrebuttal testimony, did present a sample customer-impact calculation for a single hypothetical customer" (ARES Exc. Order at 22) – this citationless statement is misleading, as ComEd calculated the effects for every rate class, not just for a "single hypothetical customer" (which, in fact, was an existing anonymous customer, whose identity was being protected to preserve confidentiality) (ComEd Ex. 5.0, Att. C, D.);

- "The Company witness, however, was unable to identify the basis for the 'snapshot' of current market values" (ARES Exc. Order at 22) – this citationless statement is false, too, as ComEd witness Arlene Juracek explained in detail why the market values that ComEd used were appropriate (Juracek Reb., ComEd Ex. 20.0, pp. 16:412-17:424, 18:458-19:462; 19:473-21:506, 22:535-24:586, ComEd Exs. 20.1, 20.2);

- "Although we have directed an audit to be conducted that likely will impact ComEd's revenue requirement, we are concerned about the potential for rate shock even once the audit results are considered" (ARES Exc. Order at 24) – there is no evidence that the audit will affect ComEd's revenue requirement at all, the record actually shows that ComEd's revenue requirement includes only its reasonable and prudent costs of providing delivery services at an acceptable level of reliability and no incremental costs due to past imprudence (DeCampli Dir., ComEd Ex. 6.0, pp. 4:57-19:406; ComEd Ex. 6.1; Helwig Dir., ComEd Ex. 19.0, pp. 6:117-27, 7:142-8:163; Hill Sup. Reb., ComEd. Ex. 38.0 CR, pp. 3:61-70, 36:847-52; DeCampli Dir., ComEd Ex. 6.0, pp. 16:326-17:362; Voltz Dir., ComEd Ex. 5.0, pp. 16:332-23:485; DeCampli Dir., ComEd Ex. 6.0, pp. 1:14-17, 19:408-23:480), no party proved otherwise (Order at 25), no evidence shows that a rate shock will occur after the audit, the record shows that rates will not increase at all for the vast majority of customers (because of CTC offsets), jurisdictional delivery services rates are only a fraction of a delivery services customer's total

electricity costs (Juracek Sur., ComEd Ex. 41.0, p. 27:630-32), the ARES Coalition has exaggerated both the nominal and real amounts of the increases proposed, any issue of "rate shock" bears on rate design, not on the level of a utility's revenue requirement *(e.g., In re Consumers Illinois Water Co*., Docket 99-0288, 2000 Ill. PUC Lexis 296 at **17-18, 24 (Order March 1, 2000) (rejecting "rate shock" objection to rate increase)*; In re Commonwealth Edison Co*., Docket 94-0065, 1995 Ill. PUC Lexis at *216-17 (Order Jan 9, 1995) (rate continuity, customer impacts, and "rate shock" considered in allocating cost of service), *aff'd in part and rev'd in part on other grounds*, 291 Ill. App. 3d 300, 683 N.E.2d 938 (1st Dist. 1997)), and the benefits of eliminating cross subsidies outweigh any possible rate shock; and

- "The Commission takes seriously its responsibility to provide a reasonable degree of certainty and continuity in the savings structure so that new entrants and customers can make educated decisions about participating in the competitive energy transactions contemplated by the 1997 Act and about investing in the infrastructure necessary for the development of the competitive market intended by the Act" (ARES Exc. Order at 24) – although the Commission takes its responsibilities seriously in general, this citationless statement has no basis in the operative provisions of the Act, and in any event, as noted above, the record shows that ComEd's proposal would promote competition (Makholm Reb., ComEd Ex. 34.0, pp. 15:359-16:373; Juracek Reb., ComEd Ex. 20.0, pp. 17:433-35) and the Order (at 20) is consistent with respect to the tariffs being approved.

In addition, the ARES Exceptions Order (at 22-23) proposes a couple of paragraphs, which, among other things, suggest that ComEd was "not forthcoming" about its transmission rates and its transmission rate case that FERC has now dismissed. These paragraphs, which do not contain even a single citation, materially misrepresent the facts. In short, in its direct and reply testimony, ComEd relied on the transmission rates that were then and are still now in effect, and ComEd measured the impact of its proposed transmission rates in every rate class. (Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 6:126-130, 7:143-46, 40:886-41:904, Att. G; Alongi-Kelly, Tr. 1235:7-1237:4, 1238:1-1239:12, 1330:22-1331:20, 1336:21-1337:4.) These paragraphs, like the rest of the changes to Section I.C.1 proposed in the ARES Exceptions Order, should be rejected.

2. Impact on Cost Based Rates

The Order, in Section I.D (at 25), properly concludes that the tariffs being approved comply with, among other things, all of the specific mandates of Section 16-108. 220 ILCS 5/16-108. The ARES Coalition disagrees, asserting in its Brief on Exceptions (at 24-25) that ComEd's rates are not limited to costs for jurisdictional delivery services, but also include costs "previously allocated or assigned to the production function." (ARES BoE at 24-25). That assertion is utterly false, as shown in Sections II.C.2, II.D.3.a, and II.D.3.b, *infra*.

The ARES Coalition also disagrees with the Order's conclusion that a phase-in of a new rate increase would violate the Act, arguing that non-residential customers already are taking services under Commission-determined cost based rates. (Order at 18, ARES BoE at 25). This argument makes no sense. The cost based rates now in place for non-residential customers were set in the 1999 DST case, using a 1997 test year. Once it is shown that new rates are just and reasonable, as ComEd has done, there is no justification under the Act for keeping the old 1999 DST rates in place. Indeed, if the ARES Coalition's argument were valid, any rate increase could be delayed -- theoretically, indefinitely -- as long as there were rates in place that were approved by the Commission at some point in the past. For instance, rates approved by the Commission in the 1950s, <u>were</u> just and reasonable, but that is no argument for keeping them in place for decades. Obviously, such a result would be absurd, and certainly at odds with the legal requirement of charging just and reasonable rates. The Act simply does not permit retaining rates that are no longer just and reasonable because they once were. Accordingly, the ARES Coalition's suggested phase-in should be rejected.

Though not mentioned in any party's brief on exceptions, the ARES Exception Order proposes adding to Section I.C.2 a paragraph discussing BOMA's claims about a comparison of ComEd's rates with those of other delivery services companies. (ARES Exc. Order at 25).

Regardless of whether this paragraph accurately depicts BOMA's position, there is no justification for its inclusion in the Order. The Order already notes BOMA's objection to such a comparison (Order at 15-16), and, in any event, the claims contained in the suggested paragraph have no merit. For instance:

- BOMA contends that the comparison cannot reasonably be considered because ComEd allegedly used "'hand-picked' utility service territories." (ARES Exc. Order at 25). No evidence supports this speculation about bias, and, in fact, the comparison used a variety of restructured peer-group utilities from around the country.

- BOMA contends that the comparison is "unsubstantiated" as a valid argument for deeming ComEd's rates just and reasonable (*Id.*). This contention is just a strawman. That is not why the comparison was admitted.

- BOMA contends that the comparison did not consider regional cost differentials for construction or maintenance, did not analyze the relative percentages of overhead and underground, and did not consider the age of the various distribution systems. (*Id.*) Nothing in the record supports these assertions or their significance. The comparison remains remarkably strong and objective evidence that ComEd's proposed delivery services rates are very reasonable in comparison to the rates charged for delivery services in other open access jurisdictions. This fact is plainly relevant to prudence.

- BOMA contends that the Commission should consider the reasonableness of ComEd's rates independently, not by looking at a comparison. (*Id.*) This is true. And, the Order does consider such reasonableness on grounds other than the comparison. (Order at 25). But BOMA put prudence in issue, and undeniably the comparison provides useful perspective to confirm that reasonableness and prudence.

The ARES Exceptions Order contains other exceptions, as well, that once again none of the parties to that Exceptions Order bothers to mention or support in its brief on exceptions. (ARES Exc. Order at 28-29). For instance, the ARES Exceptions Order proposes the addition of four paragraphs to the "Commission Analysis and Conclusions" subsection of Section I.C.2. (Order at 18). These paragraphs, which concern cost allocation issues, should be rejected for the reasons set forth in Sections II.C and II.E. In addition, the ARES Exceptions Order suggests

adding to Section I.C.2 a statement noting that "the Act does not guarantee 'full' cost recovery" (Order at 29), an issue discussed fully in Section I.A., *supra*.

IIEC, in its Brief on Exceptions, suggests expanding the "Commission Analysis and Conclusion" subsection of Section I.C.2. (IIEC BoE at 2-4). Such additional language should be rejected. Part of it states that "[t]he Commission must also determine the costs in question relate to delivery service and specifically relate to the services and facilities used to provide ComEd customers with delivery service." (IIEC BoE at 3). This statement is incorrect, as shown in Section I.A, *supra*. The remaining language that IIEC proposes for inclusion in the Order (*e.g.*, the need to determine that rates are just and reasonable (IIEC BoE at 3-4)) is unnecessary, as it is covered elsewhere in the Order.

3. Impact on the Development of an Effectively Competitive and Efficient Electricity Market

The Order properly concludes in Section I.C.3 that the tariffs being approved "would promote efficient competition and would not have an adverse effect on the development of a competitive market." (Order at 20). The ARES Coalition, with general support from Nicor (Nicor Energy BoE at 2), makes a number of claims to the contrary. (ARES BoE at 25-27; ARES Exc. Order at 30). None has merit.

The ARES Coalition begins by repeating its assertion – which Nicor echoes (Nicor Energy BoE at 2-3) – that the Commission is "mandated to promote the development of competition," citing 220 ILCS 5/16-101A(d). (ARES BoE at 25; ARES Exc. Order at 30). As explained in Section I.A, *supra*, this contention is fundamentally flawed. Section 16-101A(d) does not direct the Commission to ignore the operative provisions of the Act, and refers to many objectives, not just one, including, among other things, safety, reliability, recovery of what commonly are referred to as stranded costs, and a market that operates efficiently, not through

subsidies. *(E.g.*, ComEd's Response to the "Joint Motion to Strike" (filed Sept. 28, 2001) at 15-16, 18 (citing case law and 220 ILCS 5/16-101A(a), (c), (d))).[†]

The ARES Coalition then makes a string of meritless assertions. For instance, it claims that "[a]ny increase in existing delivery services rates during the mandatory transition period would have a corresponding negative impact on the competitive market." (ARES BoE at 25). The ARES Coalition cites no evidence for this assertion, and ignores the record, which shows that the vast majority of rate increases will be offset by CTC reductions and that ComEd's proposal will promote the competitive market, as discussed in the Introduction and Section I.C.1, *supra*. The ARES Coalition also asserts that "the mere fact that Edison has proposed such an attack on the existing levels and structure of delivery services rates and tariffs has done damage to the development of competition in Illinois." (ARES BoE at 25). Once again, the ARES Coalition cites no evidence for its assertion (the pages in its initial brief to which it refers merely set forth the same unsupported assertion), and ignores the record, which proves that ComEd's proposal will promote the development of competition (notably, the ARES Coalition fails to cite any switching statistics from before and after this Docket was filed). (ARES BoE at 25-27; ARES Init. Br. at 42-43). The ARES Coalition's subsequent assertions – that ComEd's proposal "severely undermined" the Commission's "public policy framework," "violates the basic rules of the game," "fails to address existing problems in the transition to open access," and "erect[s] new barriers to competition" (ARES BoE at 25-27) – fare no better. Serious only on paper, they, too,

[†] Nicor's citation to 220 ILCS 5/16-108(a) (Nicor Energy BoE at 2) is erroneous and does not change this analysis. Section 16-108(a) provides, in part, that in determining "the extent to which such delivery services should be offered on an unbundled basis…the Commission shall consider, at a minimum, the effect of additional unbundling on …(iii) the development of competitive markets for electric energy services in Illinois." 220 ILCS 5/16-108(a). This section applies to determinations of whether to order unbundling beyond that mandated by the Act, and regardless of whether viewed alone or in conjunction with Section 16-101A(d), does not amount to a general "directive" or authorization that the Commission promote competition. Nor can that "directive" supersede the actual operative provisions of the Act.

are unsupported by and, in fact, contrary to the evidence in the record. (Makholm Reb., ComEd Ex. 34.0, pp. 15:359-16:373; Juracek Reb., ComEd Ex. 20.0, p. 17:433-35).

The ARES Coalition also claims that ComEd's proposal will lead delivery services customers to return to bundled service, which could reestablish a ComEd monopoly. (ARES BoE at 26). This claim, however, is nonsense. As a result of the CTC offset, most customers who would achieve savings by electing to take delivery services under present rates and terms, will continue to achieve savings under the rates and terms proposed by ComEd in this case. (Juracek Reb., ComEd Ex. 20.0, pp. 24:587-25:599). Simply stated, the economics will not change dramatically as a result of ComEd's proposals and customers will continue to participate in open access.

The ARES Coalition's conclusions for Section I.C.3 (ARES BoE at 27) are equally objectionable. For example, the ARES Coalition claims that ComEd's proposal "seeks to dismantle much of the two-year-old competitive market," and would deter customers and competitors from building a "competitive electric business in Illinois." (*Id.*) Yet the ARES Coalition cites no evidence in support these propositions. This is not surprising, given that the record shows that ComEd's proposal would promote competition, as have so many of ComEd's efforts during recent years. (Makholm Reb., ComEd Ex. 34.0, pp. 15:359-16:373; Juracek Reb., ComEd Ex. 20.0, p. 17:433-35).

Finally, the ARES Coalition also contends that rates would rise for more than half of existing delivery services customers, and for all bundled service customers in 2005. (ARES BoE at 27). Once again, however, the ARES Coalition fails to cite any evidence. And, once again, the record shows otherwise: ComEd demonstrated that well over 90% of its non-residential retail customers are in customer classes or groups with positive CTCs, which would offset any

proposed increase in delivery services collections, as discussed in the Introduction and Section I.C.1, *supra*. In addition, as the Order properly recognized and as is discussed in Section I.C.4, *infra*, the Commission's decisions in future rate cases, such a case that might concern bundled service customers, will be based on the record in those cases. (Order at 21).

Accordingly, none of the claims presented by the ARES Coalition warrants changing Section I.C.3 of the Order. Nor do the changes to that section suggested in the ARES Exceptions Order, as such changes basically reflect the ARES Coalition's meritless arguments discussed above. (ARES Exc. Order at 29-32). In fact, what the ARES Coalition is really suggesting is that the Commission should keep existing rates in place -- theoretically indefinitely -- to subsidize the ARES Coalition, even though the ARES Coalition itself recognizes that the alleged shift in savings "may seem fair" (*id.*), and even though maintaining the *status quo* would mean denying ComEd its rights to cost based rates and full cost recovery. This self-serving, anti-customer, and illegal suggestion should be rejected.

4. Impact on Future Rate Cases

The Order properly concludes that this proceeding "will not have an adverse impact on future rate cases," recognizing that the Commission's decision in any case, including this one, must be based on the record. (Order at 21). The ARES Coalition takes exception to this conclusion, claiming that this case actually will have "significant implications for a likely general rate case at the close of the mandatory transition period," and that the Commission "must be careful not to lock into a set of decisions" that somehow have adverse future effects, again trotting out their Trojan Horse analogy. (ARES BoE at 27). These claims, however, are fundamentally wrong. As ComEd explained in its initial brief, the Commission's decision in any future contested rate proceeding will have to be based exclusively on the record in that proceeding; Commission orders are neither legal precedents nor *res judicata*; and there is little if

any chance that a 2000 test year will be used again in a future rate proceeding. (*See* ComEd Init. Br. at 40-41 (for detailed arguments and citations)).[†]

The ARES Coalition's recognition that rate base is cumulative (ARES BoE at 28) hardly changes this result. ComEd has proven that the plant it added to rate base is used and useful, and has been acquired at a reasonable and prudent cost. (Hill Dir., ComEd Ex. 4.0 CR, pp. 1:19-20, 8:149-55, 9:160-10:186 and Att. A; Heintz Dir., ComEd Ex. 14.0 CR, pp. 9:160-10:175, 16:288-21:385; Hill Reb., ComEd Ex. 23.0 CR, pp. 4:87-9:183; Heintz Reb., ComEd Ex. 33.0, pp. 10:230-11:255; Hill Sur., ComEd Ex. 45.0, pp. 5:88-13:276, 19:400-20:422; Heintz Sur., ComEd Ex. 57.0, pp. 2:34-3:54; *see also* Hill Dir., ComEd Ex. 4.0 CR, pp. 1:19-20, 17:345-18:369 and Att. B; Heintz Dir., ComEd Ex. 14.0 CR, pp. 21:387-22:405; Hill Sur., ComEd Ex. 45.0, pp. 13:278-20:422). Nothing in the record suggests otherwise. It will remain in rate base as long as it is used and useful. Moreover, the ARES Coalition's position is inconsistent with its repeated arguments that ComEd should have made various improvements in

[†] The ARES Coalition claims that the Order ignores the Commission's decision in Docket 99-0117 where that decision favors Staff and intervenors, but follows the decision where it favors ComEd. (ARES BoE at 28). This apparent suggestion of bias is groundless. In one of the instances cited by the ARES Coalition – the Order's determination to functionalize A&G and General and Intangible Plant, instead of using a general labor allocator – the Order recognizes the Commission's duty to base its decision exclusively on the record before it, and simply meets that duty by looking at the evidence in the record in this Docket for its decision. (Order at 61-62). That following this statutory duty produced a result different from the one reached in Docket 99-0117 does not amount to bias. Nor do the other two examples cited by the ARES Coalition. (ARES BoE at 28). With one of those other examples – inclusion of bank commitment fees as a component of utility operating expenses – the Order notes its consistency with the result in Docket 99-0117, but critically finds that ComEd has met its burden of proof. (Order at 89). The other example – recovery of prior rate case expenses – proves nothing, either: the Order simply reaffirmed an approval previously given in Docket 99-0117, based on Section 16-108 of the Act. (Order at 103). Furthermore, the ARES Coalition omits to mention that the Order chooses the embedded cost methodology over the marginal cost methodology – an extremely important set of decisions consistent with the order in Docket 99-0117 that favors the ARES Coalition and disfavors ComEd. As a result, the ARES Coalition's intimation of bias is nothing but a baseless and futile attempt to cover up for a lack of evidence.

its distribution system in earlier years: if ComEd had done so, the rate base, being cumulative, still would have included these assets. (ComEd BoE at 24-25).

The ARES Coalition claims that dire consequences also could result if the Commission "accepts any key elements of ComEd's overall proposal," as the Commission "could very well set the process in motion which likely will result in an increase in rates, on an order of the magnitude comparable to the inclusion of a new nuclear plant." (ARES BoE at 28; ARES Exc. Order at 34). Nothing supports this set of wild assertions, either. As discussed in Section I.A, *supra*, the ARES Coalition has presented misleading figures and ComEd actually is seeking only an increase in unit distribution charges of about 15.3%, after inflation. The ARES Coalition's list of purported "key elements" (ARES BoE at 28) does not withstand scrutiny:

- "large distribution rate base additions" – as noted above, the additions sought in this proceeding have been proven to be used and useful, and have been acquired for reasonable and prudent expense;

- "the re-allocation of substantial expenses from the production function to the delivery function" – there was no such re-allocation, and nothing suggests that there was (ComEd Init. Br. at 63 (summarizing evidence));

- "the packing of the test year with significant atypical expenses" – the record is clear that ComEd included only the reasonable and prudent costs of providing delivery services at an acceptable level of reliability (DeCampli Dir., ComEd Ex. 6.0, pp. 4:57-19:406; ComEd Ex. 6.1; Helwig Dir., ComEd Ex. 19.0, pp. 6:117-27, 7:142-8:163; Hill Sup. Reb., ComEd. Ex. 38.0 CR, pp. 3:61-70, 36:847-52; DeCampli Dir., ComEd Ex. 6.0, pp. 16:326-17:362; Voltz Dir., ComEd Ex. 5.0, pp. 16:332-23:485; DeCampli Dir., ComEd Ex. 6.0, pp. 1:14-17, 19:408-23:480), and no other party proved otherwise (Order at 25);

- "the failure to reflect merger savings" – ComEd actually did reflect a significant amount of merger savings, and the remaining disagreement over these savings between ComEd and Staff is only around $7 million; and

- "the reflection of supposed supply risks in the cost of capital for the delivery function" – this is simply incorrect, as ComEd did not include any increase or adjustment in Return on Equity (and "provider-of-last-resort" or "POLR" risks, of which ComEd urges consideration, is a distribution concept, not a supply one).

Accordingly, the ARES Coalition's warning that the Commission will not be able easily to turn back once it "has started down this road" (ARES BoE at 28-29) has no foundation.

Next, the ARES Coalition changes course to seek a phase-in, without carrying charges, of any additions to rate base that the Commission permits after the audit. (ARES BoE at 29). These proposals should be rejected for a number of reasons. First, ComEd has proven that its rates are just and reasonable, and therefore it is entitled to recover its costs; delaying that recovery over a phase-in would unquestionably be illegal. Second, the ARES Coalition's proposals are not only illegal, but also entirely lacking in evidentiary support. Third, as a matter of fact, customers already enjoy certain significant time advantages: while the costs being considered here are largely from 2000, the rates in the Order are not to be implemented until mid-2002, and the post-audit rates not until months later. The CTC offset provides an even greater time advantage. Fourth, the suggestion that there be no carrying charges only compounds the illegality of the ARES Coalition's proposals, as denying such charges would plainly be confiscatory.

Accordingly, none of the ARES Coalition's contentions under Section I.C.4 has merit. As a result, all of the exceptions for this section proposed in the ARES Exceptions Order, which largely reflect such contentions, should be rejected. The ARES Coalition has submitted additional language to the Order reflecting their position. If the Commission accepts this language, ComEd suggests that the following be inserted into the Order after the ARES position:

ComEd Response

ComEd challenges the ARES Coalition's assertion that, by accepting any key elements of ComEd's proposal, the Commission risks setting in motion a process that would lead to an increase in rates along the magnitude of a nuclear generation facility. ComEd contends that the evidence supports its proposal, and that the ARES Coalition's list of "key elements" of which the Commission should be critical does not withstand scrutiny. In addition, ComEd points out that the figures presented by the ARES Coalition are, at best, misleading, and that

ComEd's proposed increase in unit distribution charges is only slightly over 15%, after inflation.

6. Impact on Distribution Adequacy and Reliability

ComEd provided overwhelming evidence that its revised revenue requirement includes only the reasonable and prudent costs of providing delivery services at an acceptable level of reliability. The ARES Coalition's contention that ComEd has artificially inflated its revenue requirement, including costs that are unnecessary to "make the distribution system more reliable," (ARES Br. at 30), is unsupported by any evidence. Recognizing this fact, the ARES Coalition devotes the majority of this section to a repetition of its groundless claims, answered in other sections of this brief, that ComEd's increased costs are attributable to "failures of the past," that non-residential delivery services rates are frozen and may not be increased, and that ComEd has not honored its public statements about the handling of increased expenditures on its distribution system. (*Id.*)

Based on these allegations, the ARES Coalition requests that the Commission "place some reliance upon ComEd's public assurances" about the costs that shareholders are bearing, and use the results of the audit to assure that customers do not pay the costs for improper maintenance and management of ComEd's distribution system. (ARES Exc. Order at 37-38). The inclusion of any such conclusions in the Order is inappropriate and unwarranted. As explained in Section IV, *infra*, the record demonstrates that ComEd has honored its assurances to the public. Moreover, there is no basis in the record for concluding that the audit will support any disallowances of the prudent and reasonable distribution capital expenditures made by ComEd. Although ComEd is confident that the audit will confirm what the evidence to date has shown, the Commission should reject any request by the ARES Coalition to pre-judge the outcome of the process or to suggest by comment what that outcome may be.

7. Additional Policy Concerns

Although no party other than ComEd discussed any exceptions to Section I.C.7 in its brief on exceptions, the ARES Exceptions Order proposes to add a "Commission Analysis and Conclusions" subsection. (ARES Exc. Order at 39). This proposed addition is unwarranted.

Initially, this proposal suggests the addition of language noting the Commission's "obligation to preserve the integrity of the fact-finding process," and discussing the Commission's order in Docket 00-0579. Nothing supports this proposed addition. As discussed at the outset of Section I (prior to Section I.A), *supra*, the integrity of the fact-finding process was simply not in question here. As a result, this proposal should be rejected.

The ARES Exceptions Order also suggests (at 39) additional language noting that "the resolution of the Joint Motion allows the Commission to set interim residential rates, to be modified at a later date based upon the audit and investigation of ComEd's proposed revenue requirement." Yet as the ARES Exceptions Order itself recognizes (at 39), this topic is "discussed in greater detail below" – in fact, in the very next section of the Order (Section I.D "Resolution of the Joint Motion"). The proposed addition, therefore, would only be surplus, adding nothing. Moreover, the language "to set interim residential rates, to be modified based upon the audit and investigation…" could erroneously be taken to suggest that the interim residential rates <u>are</u> to be modified – that is, to pre-judge the audit and conclude before it has even started that rates are to be modified. As a result, this proposed addition is unwarranted.

The same pre-judgment flaw plagues the final additional language suggested by ARES Exceptions Order in its proposed "Commission Analysis and Conclusions" subsection of Section I.C.7. That proposed language (at 39) suggests that once the audit is completed, the final order in this Docket will address "an additional examination of the issues relating to the inclusion of costs incurred as a result of imprudence and mismanagement…in both residential and non-

residential services rates…." This proposed addition could be read to suggest that costs from imprudence and mismanagement have been included in such rates. Such a suggestion would be erroneous, however, not only because it would pre-judge the issue, but also because no evidence in the record supports it. As the Order correctly recognizes (at 27), "based upon the evidence now in the record, the residential delivery service tariffs approved herein comply with … the requirement that delivery service tariffs be just and reasonable…."

Accordingly, the "Commission Analysis and Conclusions" subsection proposed by the ARES Exceptions Order for Section I.C.7 should be rejected.

D. Resolution of the Joint Motion

GCI argues that the revenue requirement approved in the Order includes expenditures that are subject to the audit ordered by the Commission in Docket 01-0664, and that the existence of "open questions surrounding Edison's recovery program" is inconsistent with the Order's conclusion that ComEd met its burden of proof. (GCI BoE at 8). The ARES Coalition requests that the Order describe the circumstances that resulted in the agreement to conduct an audit, arguing that the audit will identify revenue requirement "items that were inflated due to Edison's well-documented failures of the past." (ARES BoE at 11).

Both of these suggestions should be rejected because there is no inconsistency between the Order and any action by the Commission in Docket 01-0664. Nor did the Commission make any finding in the audit docket that any expenditure by ComEd is imprudent or unreasonable. The Commission has held no hearings, received no evidence, and heard no testimony. The order in Docket 01-0664 provides that an audit will take place, on terms specified in the order, but carefully and deliberately prejudges nothing. The Order appropriately notes that "the underlying issue of prudence is being explored in the audit," and that, depending upon the outcome of the audit and further proceedings in this case, adjustments to the Order's rate base and revenue

requirement could be warranted. (Order at 52). The contention that ComEd's agreement to an audit deprives it of its right to a decision in this Docket based on the evidence is without any basis whatsoever.

II.

Revenue Requirement Issues

A. Calculation of Revenue Requirement

Section II.A of the Order, which appears on pages 25-27, addresses the calculation of ComEd's jurisdictional revenue requirement. Section II.A also addresses certain of the underlying substantive issues, although they also are addressed, in much greater detail, in various issue-specific subsections of Sections I and II.

ComEd has requested that Section II.A be revised in three respects:

- ComEd requested that pages 25-27 be supplemented in various respects regarding ComEd's evidence.
- ComEd requested that the figure on page 27 of $1,649,844,000 for the approved jurisdictional revenue requirement be revised to $1,670,739,000 to reflect ComEd's exceptions. ComEd, in the alternative, noted that the figure on page 27 is incorrect given the Order's rulings and, based on those rulings, should be corrected to $1,657,604,000, setting aside ComEd's exceptions.
- ComEd requested that the Order explicitly reject the ARES Coalition's request to spread out any non-residential rate increase over five years.

(ComEd BoE at 10-11 and Att. A; ComEd Exc. at 27-30).

The ARES Coalition challenges various aspects of Section II.A, asserting both mathematical and substantive points. (ARES BoE at 31-35; ARES Exc. Order at 41-45). In each respect, the ARES Coalition's assertions are wrong, and in many instances they are misleading.

Turning first to mathematical points, the ARES Coalition misleadingly complains that the Order "improperly suggests that the Commission should allow Edison to recover over 98% of the

revenue requirement that it now is requesting." (ARES BoE at 4, 7, 31). As they only hint at here but elsewhere expressly recognize (*e.g., id.*, at 33), the 98% figure ignores that ComEd initially proposed a jurisdictional revenue requirement of $1,786,970,000 but later requested (in its initial brief), by both agreeing to Staff's proposed reduced rate of return and agreeing to further downward adjustments, in a revised proposed jurisdictional revenue requirement of $1,682,705,000, a reduction of $104,265,000. (Order at 25). Moreover, ComEd, in its Brief on Exceptions, accepted two additional Staff adjustments and most of a third, resulting in a further revised proposed jurisdictional revenue requirement of $1,670,739,000, an additional reduction of $11,966,000. (ComEd BoE at 5, 10-11, *et seq*.).

The ARES Coalition also asserts that ComEd is seeking a "dramatic 40% increase in DST revenues over those found by the Commission to be just and reasonable less than two years ago." (ARES BoE at 32). There are a host of things about that assertion that are wrong or misleading. Most importantly, when the revenue requirement figure from Docket 99-0117 is corrected just for inflation and growth in billing determinants from 1997 (the test year in Docket 99-0117) to 2000, ComEd is seeking a real increase in jurisdictional charges of less than 15.3%. The mathematical errors that underlie the ARES Coalition calculation are many:

- To begin with, the ARES Coalition elsewhere recognizes that the nominal increase in revenue requirement from the $1,211,473,000 set in *Commonwealth Edison Co.*, Docket 99-0117, App. A, Sch. 1 (Order on Rehearing March 9, 2000), to the revised proposed jurisdictional revenue requirement of $1,682,705,000 stated in ComEd's Initial Brief, is 38.9%. (*E.g.*, *id*. at 12, 28). Given ComEd's further reduced request of $1,670,739,000 in its Brief on Exceptions, that percentage is reduced to 37.9%.

- The ARES Coalition fails to factor in inflation from 1997 to 2000. Taking into account an annual inflation factor of 3.5%, which Staff used in calculating adjustments in this Docket, is appropriate. (*E.g.*, Sant Sup. Dir., Staff Ex. 14.0, Sch. 14.7, line 10; Voltz Sup. Reb., ComEd Ex. 39.0, p. 2:33-44). Thus, the $1,211,473,000 approved in Docket 99-0117, when corrected for three years of inflation, would be $1,343,182,000. Thus, a $1,682,705,000 jurisdictional

revenue requirement would be a real increase of less than 25.3%, and the $1,670,739,000 figure would be a real increase of less than 24.4%.

- Not only that, but the ARES Coalition also fails to factor in that the proposed non-residential rate increase will not go into effect until late 2002, at the earliest, given the further proceedings to be conducted in this Docket.

- The ARES Coalition also fails to factor in ComEd's increases in load and billing determinants. From 1997 to 2000, ComEd's net weather-adjusted system load increased by 10.0% (Staff Cross Ex. 18), and its billing determinants increased by approximately 7.9% (Juracek Dir., ComEd Ex. 1.0, p. 20:506-18; Effron Reb., GCI Ex. 5.0, p. 5:10-13). Thus, the $1,211,473,000 approved in Docket 99-0117, ignoring inflation and correcting only for the increase in billing determinants, would be $1,307,179,000. Thus, a $1,682,705,000 jurisdictional revenue requirement would result in an increase in jurisdictional charges of approximately 28.7%. Given ComEd's further reduced request of $1,670,739,000, that percentage is reduced to 27.8%.

- If the $1,211,473,000 approved in Docket 99-0117 is corrected both for inflation and the increase in billing determinants from 1997 to 2000, then it becomes $1,449,293,000. Thus, a $1,682,705,000 jurisdictional revenue requirement would result in a real increase in jurisdictional charges of just over 16.1%. Given ComEd's further reduced request of $1,670,739,000, that percentage is reduced to less than 15.3%.

Apart from these basic mathematical errors, the ARES Coalition also ignores here the extent to which the nominal increase of 38.9% also is overstated due to their failure to factor in the effects of refunctionalization, other accounting changes, and more accurate accounting for General and Intangible Plant and A&G costs. (*E.g.*, ComEd Reply Br. at 8, 11-12). Of course, none of the above factors in CTC offsets.

The ARES Coalition requests no non-residential rate increase at all, and, in the alternative, supports GCI's proposed jurisdictional revenue requirement of $1,372,351,000. (*E.g.*, ARES BoE at 35). In view of the foregoing, it is clear that both the ARES Coalition's lead position -- advocating no change from the charges set in Docket 99-0117 even though those charges would have to be raised by over 19.6% just to equal 1997-2000 inflation and billing determinants growth -- and their alternative position would allow ComEd a far smaller increase

in charges than the sum of billing determinants growth and inflation. Thus, the ARES Coalition and GCI actually are asking for significant charge reductions in ComEd's rates in real dollars.

GCI also presents both mathematical and substantive points in relation to Section II.A of the Order. (GCI BoE at 10-15). GCI's complaints about ComEd requesting "an almost 39% increase" over the jurisdictional revenue requirement approved in Docket 99-0117 (*id*. at 11) and the Order's approving "93%" of ComEd's initial proposed jurisdictional revenue requirement (*id*. at 11, 14), suffer from numerous flaws shown above. Also, as shown above, GCI's proposed jurisdictional revenue requirement of $1,372,351,000 leads to a 5.3% reduction in jurisdictional unit charges in real dollars from Docket 99-0117.

GCI also asserts that "the vast majority" of the $104,265,000 reduction in its jurisdictional revenue requirement that ComEd agreed to in its Initial Brief comes from its agreement to Staff's proposed reduced rate of return. (GCI BoE at 11). Approximately 65% of that figure is attributable to that agreement. (Hill Dir., ComEd Ex. 4.0, App. C, Sch. A-2; ComEd Init. Br., Att. A, Sch. A-2). The further $11,966,000 in downward adjustments accepted in ComEd's Brief on Exceptions is not attributable to that agreement.

The ARES Coalition's substantive assertions in support of its exceptions to Section II.A of the Order are based principally on allegations about the prudence of costs included in ComEd's jurisdictional revenue requirement, and to a much lesser degree on assertions regarding ComEd's refunctionalized operating expenses. The refunctionalization points are addressed in Section II.D.3.a, *infra*. With respect to prudence, GCI complains that the revenue requirement approved in the Order includes all of the expenditures from ComEd's extraordinary two-year recovery program, accepting ComEd's position that there were no "costs additional to what Edison would have spent to upgrade its system." (GCI BoE at 14). GCI further maintains that

the Order's findings are inconsistent with ComEd's "Blueprint for Change" and its statements to the Commission and the public about the recovery program. (GCI BoE at 14-15). The ARES Coalition argues that customers should not be "held responsible for Edison's mistakes of the past," (ARES BoE at 2), and contends that the Order fails to address the prudence and reasonableness of ComEd's unprecedented remedial measures following "the repeated and well-publicized outages ... during 1999" (*id.*). As a result, the ARES Coalition requests (1) that the Order be revised to disallow "imprudently incurred or unreasonable costs" or, alternatively, (2) that the Order adopt Mr. Effron's proposed $1.372 billion revenue requirement, subject to certain adjustments. (ARES BoE at 35).

These contentions should be rejected for the reasons described in more detail in Section II.C.7.a. The revenue requirement approved in the Order is supported by overwhelming evidence establishing that ComEd's expenditures on its distribution system were prudent and reasonable. The record establishes that there are no imprudently incurred or unreasonable costs to disallow, as the ARES Coalition proposes. The failure of the ARES Coalition to identify any such costs or to point to evidence that would support a disallowance in any amount demonstrates that its first proposed alternative is no alternative at all. (ARES Exc. Order at 45).

The ARES Coalition's second option -- approval of Mr. Effron's proposed revenue requirement -- is baseless, as well, because Mr. Effron identified no imprudent expenditures and offered no testimony that would support a disallowance based on imprudence. (Effron, Tr. 2106:9-15). The adjustments that resulted in Mr. Effron's $1.372 billion proposed revenue requirement relate to other matters, such as refunctionalization and normalization of expenses. (*See* GCI Exhibit 5.1). There is simply no connection between the prudence and reasonableness

arguments made by the ARES Coalition and Mr. Effron's $1.372 billion proposed revenue requirement.

The ARES Coalition's exceptions to Section II.A of the Order, including the substantive proposed language in the ARES Exceptions Order, should be rejected, for the reasons stated here and elsewhere in this Reply Brief on Exceptions, *e.g.*, Section I.C, *supra*.

B. Selection of Test Year

GCI maintains that there are substantial questions about ComEd's use of a 2000 test year because it falls in the middle of an extraordinary two-year recovery plan, and reflects increased expenditures made in response to the outages that affected ComEd's distribution system in 1999. (GCI BoE at 15-16). The ARES Coalition argues that the 2000 test year was "obviously atypical" (ARES BoE at 37), and that costs of certain "special projects," including the Jefferson Substation Refurbishment," should be disallowed on the ground that they are "one-time" events attributable to reliability failures (ARES BoE at 9, 50).

The record does not support the contention that the choice of a 2000 test year is inappropriate, or that ComEd's proposed revenue requirement based on that year includes any imprudent or unreasonable expenditures. The evidence strongly supports the Order's conclusions to the contrary. (Order at 29, 51, 105). As ComEd has explained, the choice of a 2000 test year was essentially preordained. The Commission has discouraged use of future test years for ratemaking purposes, effectively foreclosing that option. And a 2000 test year was the optimal and only realistic alternative because ComEd operates on a calendar basis, it is the most recent year for which a FERC Form 1 and other relevant information is available, and it is the only full year in which customers were eligible for open access. (Order at 27, 28-29).

Moreover, the evidence demonstrates that the 2000 test year costs are reasonable. They are not affected by the investigative costs of the recovery program incurred in 1999, which are

the focus of many of the GCI and ARES Coalition arguments. In addition, ComEd reviewed the test year 2000 costs for any inappropriate amounts. For example, ComEd removed all costs related to implementing the Unicom/PECO merger, the nonrecurring portion of obsolete material write-offs during the year, the costs of the discontinued Light Bulb Program, and reserved but not yet incurred environmental remediation expenditures. (Hill Dir., ComEd Ex. 4.0 CR, pp. 21:432-36, 28:581-94; Voltz Sup. Reb., ComEd Ex. 39.0, pp. 2:41-3:57). ComEd also reduced storm restoration costs from the actual year 2000 level by $3 million by averaging the costs incurred in 1998, 1999 and 2000 to arrive at a better indication of ongoing storm damage cost. (Hill Dir., ComEd Ex. 4.0 CR, p. 26:560-71). In addition, ComEd compared 2000 test year costs to actual expenses incurred and projected for 2001 and found that 2000 cost levels are not atypical and, if anything, understate the actual costs that ComEd is incurring in 2001. (Voltz Dir., ComEd Ex. 5.0, pp. 19:402-23:485). Thus, the 2000 test year expense levels, though higher than expense levels in 1997, the test year in ComEd's last delivery services rate case, are representative of the ongoing costs of providing significantly more reliable service to a growing customer load.

GCI's contention that test year expenses should be reduced based on average expenses from years dating back to 1993 (GCI BoE at GCI BoE at 15-16) is unsupported by the evidence. (Also, GCI's and Staff's proposals to use years before the 1997 test year in levelization averages are inappropriate.) For example, ComEd's handling of storm restoration changed significantly in 1998, resulting in increased costs but also dramatically decreasing outage durations. (ComEd Reply Br. at 46-47). GCI has no basis for questioning these improved storm restoration procedures, but nonetheless seeks to adjust test year expenses based on prior years in which less effective measures were in place. GCI argues that test year FERC Account 580 expenses should

be based on the amount reported in 1999, rather than the test year figure, despite uncontradicted evidence that the 1999 FERC Account 580 balance is not representative of ComEd's costs because it excludes significant recurring expenses that, in 1999, were recorded in FERC Accounts 920 and 921. (*See* Voltz Sur., ComEd Ex. 46.0, pp. 11:238-12:258)

These examples illustrate the error in GCI's abandonment of test year data in favor of an averaging approach, which produces a revenue requirement that bears no relation to the ongoing costs of providing delivery services. (ComEd Init. Br. at 92-95). As Mr. Hill explained in his testimony:

> Providing delivery services is a vastly complicated matter, and the Company's proposed revenue requirement includes costs of thousands of activities booked in numerous FERC Accounts. Picking out a particular FERC Account or activity in which the test year data shows costs that are higher than in one or more previous years, and then arguing that that difference standing alone means that there is something wrong with the test year data, is arbitrary, unreasonable, and unfair to the utility. Of course there are ups and downs, but that does not mean that the ups should be rejected while the downs are retained. Moreover, due to accounting changes, there often are apparent differences in costs booked to FERC Accounts or costs of activities that in whole or in part are not real differences at all. For example, in particular to this proceeding, pre-test year data generally does not reflect the refunctionalization process that now is necessary for purposes of ratemaking in a delivery services rate case.
>
> ...[T]he flaw that was present in Mr. Effron's adjustment of FERC Accounts 580 and 590 is also present in his proposed adjustment to Account 903. As I discussed in my rebuttal testimony and above, the FERC accounts to which costs are charged can and do change from year to year rendering an adjustment based on the annual variance in <u>one</u> account inappropriate. The impact on FERC O&M Accounts due to the refunctionalization of transmission and distribution accounts is just one example. Beginning in 1999, certain customer expenses previously charged to FERC Account 912 were changed to correctly record these costs to FERC Account 903. In fact, this change was the direct result of the Commission's directive to ComEd in its Order on Rehearing in Docket No. 99-0117 at pages 10 and 11. However, Mr. Effron either was unaware of this directive, or ignored it, because he made no attempt to reflect such change in calculating the average that is the basis of his proposed adjustment to Account 903.

(Hill Supp. Reb., ComEd Ex. 38.0, 6:124 –36, 10:208-228).

Two final points should be made with respect to GCI's and the ARES Coalition's discussions of the 2000 test year. First, GCI proposes that the summary of its position set forth in the second full paragraph on page "32" of the Order -- it appears to ComEd that GCI actually means the second full paragraph on page 28 -- be amended to supplement that discussion. (GCI BoE at 16). While ComEd entirely disagrees with GCI's arguments, ComEd does not object to GCI's request, provided that the summary of ComEd's responses on pages 28-29 of the Order then be supplemented to reflect ComEd's responses to the additional GCI material to be added. (*E.g.*, ComEd Reply Br. at 10-12, 40, 44-50, 59). ComEd proposes that the following new paragraph be added at the top of page 29 of the Order:

> ComEd further contends that GCI's speculative arguments regarding the impacts of the "recovery program" and 1999 outages are unsustainable and do not call into question the use of the 2000 test year. ComEd has shown that the revised proposed jurisdictional revenue requirement is prudent, just, and reasonable and does not include incremental costs due to past imprudence, nor did the initial proposal include any such incremental costs. The initial and revised proposals have never included any operating expenses incurred before the test year at all, and thus do not include the emergency restoration of power operating expenses associated with the 1999 outages. GCI's various "levelization" proposals are not sustainable given the actual evidence, are arbitrary and inconsistent, and transparently are results-driven. Once ComEd made a showing of the costs necessary to provide jurisdictional service, it made out its *prima facie* case, and the burden of going forward with the evidence shifts to other parties to show that those costs are unreasonable. *E.g., City of Chicago v. People of Cook County*, 133 Ill. App. 3d 435, 442-43, 478 N.E.2d 1369, 1375 (1st Dist. 1985). That GCI did not do, instead presuming that anywhere costs varied upwards GCI was free to propose levelization based on nothing more than the fact of the increase without refuting ComEd's more than sufficient evidence.

Second, the claim that 2000 test year expenses were higher than necessary because of alleged imprudence is discussed in more detail in Section II.C.7.a.

C. Rate Base

2. General and Intangible Plant – Direct Assignment and Allocation

Pages 36-37 of the Order correctly approve ComEd's accounting for its General Plant and Intangible Plant costs. Staff, the ARES Coalition, GCI, and IIEC all take exception and make or support varying proposals for use of labor allocators across the board to allocate those costs. (Staff BoE at 3-8; ARES BoE at 7-8, 38-41; ARES Exc. Order at 28-29, 50-58; GCI BoE at 16-18; IIEC BoE at 4-7). Only GCI and IIEC argued for labor allocators in direct testimony. Staff did so only in rebuttal. The ARES Coalition filed no testimony on the subject other than a few spurious attacks on ComEd and its general ledger in rebuttal.

ComEd submitted overwhelming detailed evidence that proved the accuracy of its accounting for its General Plant and its Intangible Plant costs and its underlying analysis, as discussed below. No party has submitted evidence showing otherwise.

- No party submitted any evidence identifying even one dollar of General Plant or Intangible Plant costs that is included in ComEd's revised proposed revenue requirement that was not incurred in order to provide jurisdictional delivery services.

- No party submitted any evidence identifying even one dollar of General Plant or Intangible Plant costs that ComEd directly assigned to jurisdictional delivery services that is not amenable to direct assignment. ComEd has shown that it used direct assignment where feasible, and appropriate allocators based on cost-causation for the remaining costs, including, where appropriate, the same labor allocator that GCI and IIEC propose.

- The parties advocating use of labor allocators across the board cite the Commission's Order in Docket 99-0117, which used a labor allocator for General Plant (not Intangible Plant) and A&G costs. The Commission has made it clear, however, as in Docket 99-0013, that direct assignment, where feasible, is the most accurate and preferred methodology.

- No party submitted any evidence identifying any flaw in ComEd's accounting or analysis. While Staff claims that it has identified certain inconsistencies in ComEd's evidence or analysis, Staff's claim simply is wrong and reflects only a very persistent lack of understanding on Staff's part, which at this point verges on

a willful refusal to acknowledge the facts. The ARES Coalition's attacks on ComEd's electronic general ledger, CBMS, are unsupported and misleading.

- The parties advocating use of labor allocators across the board indulge in the circular argument that because their respective labor allocators produce results that differ from ComEd's accounting, the former must be right and the latter must be wrong. This assertion is wrong because the overly simplistic use of general allocation factors is not a substitute for the thoughtful and accurate direct assignment analysis performed by ComEd in this filing.

- Moreover, Staff and IIEC have taken positions in other past and pending dockets that are at odds with their arguments here and undercut their credibility on this subject, such as Staff's supporting ComEd's accounting for its General Plant and Intangible Plant costs in Docket 99-0117, Staff's presenting testimony in the instant Docket criticizing use of allocators where direct assignment is feasible, Staff's arguing in Docket 00-0802 for a proposed labor allocator that reflected the sale of generation outside the test year, Staff's arguing for a differently modified labor allocator in Docket 01-0432, the Illinois Power rate case, and IIEC's arguing against a labor allocator in Docket 01-0432.

- In addition, the ARES Coalition has suggested here that direct assignment will be relied on in ComEd's next bundled rate case.

If ComEd's accounting or analysis actually were wrong in some respect, then Staff, the ARES Coalition, GCI, and IIEC would be able to identify some specific costs that are in ComEd's revised proposed jurisdictional revenue requirement that do not belong there. Their failure, not only to do so, but even to claim that they have done so, says it all. They instead rely on the circular argument noted above. Their oft-repeated complaint that executive compensation costs, in particular, are not amenable to direct assignment (*e.g.*, Staff Init. Br. at 60; Staff BoE at 10, 11) involves A&G expenses, and ignores that ComEd in its analysis of A&G expenses (discussed in Section II.D.3.b, *infra*) allocated executive compensation costs using the same labor allocator that GCI and IIEC propose. The arguments of Staff, the ARES Coalition, GCI, and IIEC here are bankrupt, and their exceptions must be rejected.

ComEd Proved Its Accounting And Analysis

The evidence shows that ComEd has been restructured and now is a wires company. ComEd thus is a different company from that in Docket 99-0117, although Staff and the other intervenors advocating across the board labor allocators want to pretend otherwise.

- Docket 99-0117 involved an adjusted 1997 test year. *Commonwealth Edison Co.*, Docket 99-0117 (Order August 26, 1999) p. 9. ComEd in 1997 was a vertically integrated electric utility that owned numerous fossil generating plants and the nation's largest nuclear fleet. *E.g.*, *id.* at 9, *et seq.*

- The instant Docket uses an adjusted 2000 test year. *See* Section II.B, *supra*. By December 1999, ComEd had sold all its fossil units. (*E.g.*, Hill Sur., ComEd Ex. 45.0, p. 19:392-93). In August or September 2000, ComEd began its restructuring into separate entities. At that time, the movement of entities, departments, and personnel, and the accounting necessary to implement the restructuring, occurred. (*E.g.*, Hill Reb., ComEd Ex. 23.0 CR, pp. 6:114-16, 7:149-53, ComEd Ex. 23.1; Hill, Tr. 3203:3-3206:5, 3210:3-18, 3545:9-3546:13). By January 2001, ComEd formally concluded its restructuring into separate entities. At that time, generation and other competitive businesses formally were separated from the "wires company" and given separate balance sheets that accurately assigned assets and liabilities. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, pp. 8:168-9:174; Strobel Reb., ComEd Ex. 18.0, pp. 6:130-7:138; Hill Sur., ComEd Ex. 45.0, pp. 5:104-6:110).

- ComEd's independent auditor, PricewaterhouseCoopers ("PWC"), as part of its first quarter 2001 interim audit procedures, reviewed the balance sheets of the restructured entities and, in large part, their other financial statements, and found no irregularity. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, p. 9:175-76; Strobel Reb., ComEd Ex. 18.0, p. 7:148-51; Hill Sur., ComEd Ex. 45.0, p. 6:110-11).

- All data supporting the restructured balance sheets, including the General Plant and the Intangible Plant accounts, were available to the parties for several months in this Docket. (*E.g.*, Hill Sur., ComEd Ex. 45.0, pp. 5:108-6:110, 8:166-68).

- In this Docket, ComEd also had use of the CBMS system. CBMS is, and has been since January 1, 1998, ComEd's general ledger, and thus CBMS has been subject to three independent audits (as well as interim audit procedures). (*E.g.*, Hill Sur., ComEd Ex. 45.0, pp. 5:88-6:118). The restructured balance sheets are included in CBMS. (*Id.*)

ComEd's restructuring has profoundly affected its costs. To pretend otherwise is unreasonable and wrong. For example, in 1999, when ComEd owned generation, its fossil

production expenses were 21.3% of its O&M Expenses, but in 2000 they were just 0.16% of those expenses. (Hill Sur., ComEd Ex. 45.0, p. 19:392-99).

The foregoing undisputed facts are at the heart of why the Order is right about ComEd's accounting for General Plant and Intangible Plant and why Staff and others are wrong. The actual restructured balance sheets, not estimates, were used by ComEd in this Docket to determine the General Plant and Intangible Plant used to provide jurisdictional distribution services. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, App. A, pp. 1:20-2:25; Hill Sur., ComEd Ex. 45.0, pp. 8:170-9:176). Because those balance sheets addressed all assets and liabilities of ComEd, including General Plant and Intangible Plant, the only direct assignment or allocation of those costs that was necessary was in two areas: (1) removing the FERC-jurisdictional transmission component from the ComEd balance sheet and (2) assigning or allocating the appropriate amount of General Plant and Intangible Plant of Exelon Business Services Company ("Exelon BSC") back to ComEd for ratemaking purposes. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, App. A, pp. 1:20-2:25; Hill Sur., ComEd Ex. 45.0, pp. 8:170-9:175).

ComEd submitted a wealth of evidence regarding the accuracy of its accounting for General Plant and Intangible Plant, including the evidence cited above and additional evidence. (Hill Dir., ComEd Ex. 4.0 CR, pp. 1:19-2:23, 7:145-9:186 and Att. A; Heintz Dir., ComEd Ex. 14.0 CR, pp. 9:160-10:175, 16:288-21:385; Strobel Reb., ComEd Ex. 18.0, pp. 6:126-7:152; Hill Reb., ComEd Ex. 23.0 CR, pp. 4:87-9:183; Heintz Reb., ComEd Ex. 33.0, pp. 10:230-11:255; Hill Sur., ComEd Ex. 45.0, pp. 5:88-20:422; Heintz Sur., ComEd Ex. 57.0, pp. 2:34-3:54; *see also* Hill Dir., ComEd Ex. 4.0 CR, pp. 17:345-18:369 and Att. B (discussing A&G expenses); Heintz Dir., ComEd Ex. 14.0 CR, pp. 21:387-23:440 (same)). Where necessary detail to assign General Plant and Intangible Plant items directly was not available, ComEd used appropriate

allocation factors based on cost causation, and ComEd in its direct case and at many times thereafter described in detail how each individual General Plant and Intangible Plant account correctly was assigned or allocated. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, p. 9:176-81; Hill Sur., ComEd Ex. 45.0, pp. 7:148-10:213, 11:228-13:276). As stated above, no party has submitted any evidence disproving any of the above facts, or identifying even a single inaccuracy in ComEd's accounting for General Plant and Intangible Plant or its underlying analysis.

The subject of Intangible Plant is particularly telling. ComEd showed that its $179,899,429 in Intangible Plant consists of only five items -- generally large software systems -- and ComEd supported its accounting for those costs with specific evidence. (*E.g.*, Hill Sur., ComEd Ex. 45.0, pp. 11:228-13:276, ComEd Ex. 45.1; *accord* Hill Dir., ComEd Ex. 4.0 CR, p. 8:166-68 and App. A, p. 7:141-8:160). Not one party even attempted to refute that specific evidence.

The Commission must render its decision here based on the law and exclusively on the evidence in the record. 220 ILCS 5/10-103, 10-201(e)(iv); *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 201, 227, 555 N.E.2d 693, 697, 709 (1989). Because what matters is the law and the evidence -- not Staff's, the ARES Coalition's, GCI's, and IIEC's desires to turn a blind eye to the evidence and their wishful thinking -- the Order is right, and their exceptions must be rejected.

Staff's Arguments Are Incorrect

Staff makes three overall arguments: (1) the Commission approved a labor allocator for the allocation of General Plant (and A&G costs) in Docket 99-0117 (and for all three categories in other dockets), and ComEd offered no credible evidence to deviate from that approach; (2) ComEd's evidence or analysis contained inconsistencies; and (3) Staff's particular labor allocator should be used because, Staff emphasizes, it has been altered by Staff's substitution of 1999 production labor data for 2000 production labor data so as to reflect the labor for both the fossil plants sold to Midwest in 1999 and the nuclear plants now owned by Exelon Generation Company LLC. (Staff BoE at 3-8).

Staff's proposal would remove a huge amount -- $405,161,000 (with slight resulting offsets of $1,035,000 to accumulated depreciation and $556,000 to ADIT) -- from ComEd's net rate base (and would disallow $60,002,000 in A&G costs, as discussed in Section II.D.3.b, *infra*). (Staff Init. Br., App. A, Schs. 3, 4; Lazare Reb., Staff Ex. 21.0, p. 18:374-77 and Sch. 21.2, p. 2). Staff, recognizing that the Commission might reject use of a labor allocator as to Intangible Plant, also showed the somewhat reduced effects of applying Staff's labor allocator only to General Plant (and A&G costs). (Lazare Reb., Staff Ex. 21.0, p. 18:377-80 and Sch. 21.2, p. 3).

All of Staff's arguments and proposals are wrong, however, for they suffer from a host of fatal flaws. First, the Commission cannot base its decision here on its decision to use a labor allocator for General Plant and A&G costs in Docket 99-0117 and for General Plant, Intangible Plant, and A&G costs in other dockets. As shown above, the Commission must render its decision here based on the law and exclusively on the evidence in the record. Also, the Order in Docket 99-0117 is based on a different evidentiary record that relates to an adjusted 1997 test

year, just as the other orders are based on their respective evidentiary records, and Commission orders are not *res judicata*. *E.g., United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 22-23, 643 N.E.2d 719, 729 (1994); *Mississippi River Fuel Corp. v. Illinois Commerce Comm'n*, 1 Ill. 2d 509, 513, 116 N.E.2d 394, 396-97 (1953).

Second, Staff's reliance on those Commission orders also is unwarranted and inconsistent for several additional reasons, even setting aside for the moment that ComEd proved the correctness of its accounting for General Plant and Intangible Plant and its analysis.

- The Commission has made clear that it prefers direct assignment where feasible, because it inherently is more accurate, as illustrated by the Order on Rehearing in Docket 99-0117, where the Commission accepted ComEd's evidence directly assigning certain costs that had been recorded in FERC "sales and marketing" Accounts, and as expressly held in the Order in Docket 99-0013. (Hill Sur., ComEd Ex. 45.0, p. 7:138-46). *Commonwealth Edison Co.*, Docket 99-0117 (Order on Rehearing March 9, 2000); *Illinois Commerce Comm'n On Its Own Motion v. Central Illinois Light Co., et al.*, Docket 99-0013 (Order Oct. 4, 2000) pp. 44-45.

- Staff witnesses, including Staff witness Peter Lazare, testified in Docket 99-0117 that ComEd's functionalization of General and Intangible Plant was reasonable and should be adopted. (Hill Sur., ComEd Ex. 45.0, pp. 11:224-26, 13:274-76; Lazare, Tr. 2802:4-22). Staff has made no convincing attempt in this Docket to explain away that testimony.

- Staff witness Carolyn Bowers, when addressing certain A&G costs in this Docket, criticized use of an allocator where (in her opinion) direct assignment is feasible. (Bowers, Staff Ex. 4.0, pp. 133:7-145; Hill Sur., ComEd Ex. 45.0, p. 17:354-58).

- Staff, in Docket 00-0802, in contrast to this Docket, argued that its labor allocator should be modified to reflect restructuring through sale of generation even though that event occurred after the test year, the utility did not disagree, and the Commission approved Staff's proposal. *Central Illinois Public Service Co., et al.*, Docket 00-0802 (Order Dec. 11, 2001) pp. 7-9.

- Staff also argued for a differently modified labor allocator in Docket 01-0432. *Illinois Power Co.*, Docket 01-0432 (Proposed Order Feb. 1, 2002) pp. 11-13.

- The Administrative Law Judge's February 14, 2002, Proposed Order in Docket 01-0465 Etc. Consol. recommends that the utility's General Plant and Intangible Plant be functionalized based on a combination of direct assignment and Staff's labor allocator and that A&G expenses be allocated using a different composite

allocator. *Central Illinois Light Co.*, Docket 01-0465 Etc. Consol. (Proposed Order Feb. 14, 2002) pp. 30-34.

- Also, as discussed below, IIEC, while advocating a labor allocator (different from Staff's) in this Docket, has opposed a labor allocator (in light of its results) in Docket 01-0432. *Illinois Power Co.*, Docket 01-0432 (Proposed Order Feb. 1, 2002) pp. 13-16. Thus, Staff's reliance on IIEC's position in the instant Docket (Staff BoE at 6) is unwarranted, even setting aside, as shown below, that IIEC initially did not propose a labor allocator for Intangible Plant and proposes a different labor allocator.

- Also, while the ARES Coalition now supports Staff's labor allocator in this Docket (without submitting any supporting evidence and no doubt entirely because of its results), the ARES Coalition also indicates that it anticipates relying on direct assignment in ComEd's next rate case. (ARES BoE at 7-8, 40).

- Finally, while Staff and the other parties advocating labor allocators here criticize ComEd for not using that methodology across the board, Staff and some of those other parties had no compunction in Docket 99-0117 about attacking nearly two decades of Commission decisions approving marginal cost ratemaking, *Commonwealth Edison Co.*, Docket 99-0117, pp. 52-54 (Order August 26, 1999); they now propose in this Docket, among other things, to extend embedded cost ratemaking to the remaining over 90% of ComEd's customers who still are on rates based on Commission-approved marginal cost principles (less the statutory residential rate cuts); and Staff proposes to use a nine-year levelization period for storm costs even though the Commission ordered a five-year period in Docket 99-0117. (*E.g.*, Staff Init. Br. at 85-95; Staff BoE at 17-18). They cannot have it both ways.

Third, and even more importantly, as shown above, ComEd submitted overwhelming detailed evidence that proved the correctness of its accounting for its General Plant and its Intangible Plant costs and its underlying analysis. No party refuted that evidence.

Fourth, Staff's claims of inconsistencies on ComEd's part are wrong, as ComEd repeatedly has shown. Staff's claims are founded on misunderstandings.

- Staff claims that ComEd offered two inconsistent explanations for how it analyzed transportation equipment. (Staff BoE at 4). Staff's claim is false. ComEd's evidence is entirely consistent. ComEd first used its restructured balance sheets for the split in transportation equipment between ComEd and the other restructured entities, and ComEd then used a 1999 study to determine the transmission versus distribution split within ComEd's transportation equipment (in this instance, no analysis of Exelon BSC assets was needed because it owned no transportation equipment). (Hill Dir., ComEd Ex. 4.0 CR, App. A, p. 3:75-85;

Hill Sur., ComEd Ex. 45.0, p. 10:199-205; Hill, Tr. 3212:16-3215:5). There were two steps, not one. Staff's claim of inconsistency rests entirely on Staff's continued misunderstanding that there was more than one step.

- Staff's claim of inconsistency regarding communication equipment (Staff BoE at 4-5) again suffers from Staff's misunderstanding (or refusing to admit) that there was more than one step utilized in the direct assignment process, as well as from Staff's confusion about the fact that determining the precise location of the equipment (which is recorded in ComEd's property records) provides information regarding the equipment's purposes. (Hill Dir., ComEd Ex. 4.0 CR, App. A, p. 6:118-32; Hill. Sur., ComEd Ex. 45.0, p. 10:206-209; Hill, Tr. 3218:20-3220:20).

- Staff's claim of inconsistency regarding miscellaneous equipment (Staff BoE at 6) also suffers from the failure to recognize that there was more than one step. (Hill Dir., ComEd Ex. 4.0 CR, App. A, p. 6:133-38; Hill Sur., ComEd Ex. 45.0, p. 10:210-13; Hill, Tr. 3220:21-3223:13, 3548:1-3552:18). The very plain explanation and illustration of the two-step process in Mr. Hill's redirect here (Hill, Tr. 3548:1-3552:18), in particular, makes Staff's continuing to pursue these claims of inconsistency entirely unjustified.

- Staff's claim of overall inconsistency in ComEd's approach between Docket 99-0117 and the instant Docket rests on the spurious logic that because the results differed (which is not surprising in the slightest given the difference in test years and ComEd's restructuring, discussed above), the methodologies must be inconsistent. (Staff BoE at 5-7). ComEd pursued the same overall approach in both dockets, *i.e.*, using direct assignment where feasible and otherwise using the allocator that best reflects cost causation for the particular costs at issue. ComEd had more and better data and CBMS in the instant Docket, thus allowing it to improve the accounting and analysis here. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, App. A (General Plant and Intangible Plant costs), App. B (A&G costs, noting that CBMS was particularly helpful as to those costs); Hill Reb., ComEd Ex. 23.0 CR, pp. 7:142-9:183; Hill Sur., ComEd Ex. 45.0, p. 15:308-24; Hill, Tr. 3546:21-3547:21). Staff's comparison actually illustrates that ComEd's approach now is more accurate. (Hill Sur., ComEd Ex. 45.0, p. 18:374-88). Also, Staff's arguments are internally inconsistent: Staff simultaneously claims that ComEd's approach was rejected in Docket 99-0117 and that ComEd's approach is different from its approach in Docket 99-0117. Staff cannot have it both ways. Moreover, Staff's claim of inconsistency based on results is inconsistent with Staff's argument in its February 21, 2002, Brief on Exceptions (Staff BoE at 2-4 in Docket 01-0465 Etc. Consol.) that its labor allocator should be used for A&G costs even though its results differed greatly from its results in the 1999 delivery services rate case involving the same utility.

Fifth, Staff's criticism of ComEd witness Mr. Hill, that he was unable to recall on cross-examination whether ComEd used the same approach for Intangible Plant in

Docket 99-0117 that ComEd used in the instant Docket (Staff BoE at 6), is meaningless and inconsistent. Staff witness Peter Lazare, when seeking to explain away the fact that the Commission did not approve a labor allocator for Intangible Plant in Docket 99-0117, pointed out that ComEd had only $80,375 of Intangible Plant to functionalize in Docket 99-0117, not the $179,899,429 ComEd had in the 2000 test year, and he asserted that that meant it was not an issue in Docket 99-0117 but is relevant in the instant Docket. (Lazare Reb., Staff Ex. 21.0, pp. 13:263-14:275).

Finally, Staff's argument that its proposal, including its alteration of the labor allocator by substituting 1999 production labor data, is justified because ComEd, in determining the amount of General and Intangible Plant to include in the 1999 sale of its fossil units relied on an analysis that produced an amount that was not as large as that that would follow from the labor allocator,[†] which Staff here refers to as "the Commission-approved methodology" (Staff BoE at 6-7), makes no sense on its face, is circular, and is wrong for numerous reasons.

- Staff's criticism assumes, without proof, that ComEd's accounting of the sale, including the amount of General and Intangible Plant that went with the sale, was wrong simply because it did not use a figure as large as that which would result from the labor allocator. That is circular.

- Staff does not and cannot claim that there was any such objection in Dockets 99-0273 and 99-0282 Consol.

- The fact that a major real world transaction did not include the amount of other assets that an arbitrary labor allocator would suggest is no reason to use that allocator here. Quite the opposite.

- As to the proceeds of the sale, the ability of ComEd to mitigate its stranded costs through the asset sales is entirely lawful under the Act. 220 ILCS 5/16-111(g).

[†] The Commission ordered the filing of accounting entries when it approved the transaction which included the sale of the fossil units. *Commonwealth Edison Co.*, Dockets 99-0273, 99-0282 Consol., Finding (10) (Order Aug. 3, 1999). The Notice of Accounting Entries filed in that Docket in compliance with that Order shows FERC Account 101 Utility Plant in Service - General Plant sold as $24,590,000, which yielded net General Plant sold of $17,345,000.

ComEd's mitigating its stranded costs, too, is no reason to adopt Staff's proposed labor allocator. Indeed, by arguing that ComEd's General and Intangible Plant balances should be treated as if ComEd had sold more of such plant with its fossil units, Staff proposes effectively to review retroactively the assets that ComEd sold as part of that sale. Section 16-111(g)(4)(vi) specifically prohibits such an attempt to review retroactively and effectively to recast the scope of the fossil unit sale.

- That ComEd stated that its sale of the fossil units would promote competitive generation also cannot, as Staff would have it, somehow be distorted into an argument for the labor allocator. (Staff BoE at 7).

- Staff's unsupported argument that ComEd's fossil unit sale transaction has "penalized" customers not only is unsupported and circular, it is disproved by Staff's own witnesses. Staff witness Peter Lazare showed that ComEd's jurisdictional General Plant had increased by only 3.97% from Docket 99-0117 to the instant Docket (and that its A&G costs had increased by only 8.41%), and that is before factoring in Staff's own annual inflation rate of 3.5% that it used in its adjustments. (Lazare Reb., Staff Ex. 21.0, Sch. 21.1; *e.g.*, Sant Sup. Dir., Staff Ex. 14.0, Sch. 14.7, line 10 (the inflation rate)). Staff simply has no basis in law or fact for suggesting that the sale of the fossil units supports the labor allocator.

- Staff's proposal also is unreasonable. Having sold the entire fossil business in 1999, ComEd had no material General Plant or Intangible Plant (or A&G) costs related to that business in 2000 (*e.g.*, Hill Sur., ComEd Ex. 45.0, pp. 5:88-13:276, 19:390-20:422), which is why Staff could achieve its desired result only by substituting that 1999 data. While Staff claims that including the fossil plants is appropriate, it identifies no General Plant or Intangible Plant items included by ComEd in its jurisdictional rate base that do not belong there or that should be attributed to the fossil plants.

- In addition, as noted above, Staff cannot credibly contend that its "one size fits all" labor allocator accurately reflects cost causation in this case. 220 ILCS 5/16-108(c). Even the other parties that proposed a labor allocator, GCI and IIEC, did not include the fossil plants.

The Commission is required to set jurisdictional delivery services rates that allow ComEd full cost recovery and are cost based. 220 ILCS 5/16-108(c). The labor allocator is incorrect and it does not do that. Staff's exceptions are wrong, and they must be rejected.

The ARES Coalition's Arguments Are Incorrect

The ARES Coalition, which offered no relevant evidence on the subject at the hearing, now offers a melange of unsupported and incorrect arguments for Staff's proposed labor allocator. (ARES BoE at 8, 38-41; ARES Exc. Order at 28-29, 50-58). None is valid. The ARES Coalition fails to demonstrate that there is any flaw in ComEd's accounting for General Plant and Intangible Plant and its analysis.

The ARES Coalition's attempt to diminish the Order by referring to its "scant reasoning" (ARES BoE at 38) does not do justice. This Section of the Order runs from page 29 to page 36 (*see also* Order at 56-62 regarding A&G costs), and given the points in its discussion of ComEd's position and its responses that support the Order, as well as the reasoning stated in the Commission Analysis and Conclusion section, the Order is more than sufficient to sustain its finding, although ComEd believes that the Order's completeness would be enhanced by further discussion of ComEd's responses. (ComEd BoE at 11-13).

The ARES Coalition also argues that only ComEd supports its analysis. (ARES BoE at 38). That other parties in a rate case either propose an adjustment to lower rates or are silent on the subject does not mean that the utility's position is wrong. In addition, as shown above, ComEd's position is supported by a number of things in addition to its own unrefuted evidence. Indeed, as noted earlier, among other things, the ARES Coalition indicates that it anticipates relying on direct assignment in ComEd's next rate case. (ARES BoE at 8, 40). The ARES Coalition has been the sole party advocating various positions in this and prior dockets. The issues in a rate case are not up for a vote of the parties. If they were, it would only take one rate case to bankrupt each utility. The issues are to be decided under the law exclusively based on the evidence in the record, as shown earlier.

The ARES Coalition also suggests that ComEd's accounting and analysis are flawed or at least questionable to the extent ComEd relied on CBMS. (ARES BoE at 38-39). The ARES Coalition's disingenuous attempt to paint ComEd's general ledger, CBMS, as some sort of mysterious and dubious new entity, including the ARES Coalition's attempt to distort the facts regarding Staff's field audit and relevant testimony, is without merit. The ARES Coalition's innuendo is unsupported, mischaracterizes the ComEd and Staff testimony cited and the facts regarding Staff's field audit, and is wrong. (Hill Sur., ComEd Ex. 45.0, pp. 5:88-6:118; Strobel Reb., ComEd Ex. 18.0, pp. 6:126-7:152; Gorniak, Tr. 1656:11-1661:21). CBMS is, and has been since January 1, 1998, ComEd's general ledger, and thus CBMS has been subject to three independent audits (as well as interim audit procedures). (*E.g.*, Hill Sur., ComEd Ex. 45.0, pp. 5:88-6:118). Among other things, ComEd witness Jerome Hill testified, with regard to ARES witnesses Dr. Phillip O'Connor and Richard Spilky's assertions of ComEd's shifting expense items from the supply function to the distribution function by use of CBMS, that:

> Their assertions are simply unfounded in fact. The CBMS accounting system is the Company's general ledger system, and it has been since 1998. It contains all accounting transactional records of the Company whether those transactions relate to balance sheet or income statement accounts. In short, the CBMS system is the Company's accounts and records. As a reporting company under the rules of the Securities and Exchange Commission, ComEd is required to have its accounts and records audited by independent auditors who in turn render an opinion on the accuracy of the Company's financial statements. As part of this, tests are conducted on account variances from prior year results. The CBMS account activity has been verified via this process since 1998. In addition, as described in Appendix A in my direct testimony (ComEd Ex. 4.0 [CR]), the balance sheet accounts in CBMS of the prior vertically integrated ComEd utility were split-up to reflect the changed and restructured business functions, including ComEd's energy delivery function. Because Exelon Generation Company, Exelon Energy Delivery Company (which includes ComEd as a separate subsidiary), and Exelon Business Services Company (which includes Exelon's Corporate Center) are separate legal entities, it was necessary to accurately assign assets and liabilities on a functional basis to the appropriate entity. The simple fact is that each and every balance sheet item, including General Plant and Intangible Plant accounts, were analyzed and assigned to one or more of these entities. The Company's

> independent auditor reviewed this analysis and assignment and all data supporting this split was available to all parties.
>
> The workpapers of the independent auditor review were made available to Staff during its field audit. At least five members of Staff were given a presentation on the CBMS system during their field audit. Staff has made no adjustments nor raised an issue regarding the integrity of CBMS data based on that review. At least as important, the Company's accounts and records data that are verified and reviewed by an independent, world-class professional accounting firm is evidence that the data utilized in this proceeding from the CBMS system is both accurate and reliable.

(Hill Sur., ComEd Ex. 45.0, pp. 5:92-6:118) (emphasis added). Indeed, all the underlying data were available to all parties for several months in this Docket. (*E.g.*, *id.*, pp. 6:110-11, 8:166-68). Staff's testimony and Brief on Exceptions contains no criticism of CBMS or of the opportunity provided to Staff in its field audit to obtain information about or from CBMS.

The ARES Coalition's echoing or characterizing various Staff's arguments (ARES BoE at 39) adds nothing. Staff's arguments have been refuted, *supra*.

The ARES Coalition's citation of the Administrative Law Judges' February 1, 2000, Proposed Order in Docket 01-0432 (ARES BoE at 39-40) also does not justify the ARES Coalition's position. Again, the Commission cannot base its Order here on an Order in another Docket. Moreover, that Proposed Order, which adopts Staff's differently modified labor allocator, expressly takes the position that the evidence in the record there was insufficient to evaluate whether direct assignment of any General Plant or Intangible Plant was appropriate. *Illinois Power Co.*, Docket 01-0432 (Proposed Order Feb. 1, 2002) pp. 17-18. No such finding is possible here.

GCI's Arguments Are Incorrect

While GCI did submit evidence on the subject, GCI's arguments here are nothing more than summaries of a subset of Staff's arguments, all of which have been refuted above. (GCI

BoE at 16-18). Also, GCI's witness admitted that direct assignment is more accurate when costs are amenable to direct assignment and can be attributed solely to a particular function. (Effron, Tr. 2081:19-2082:3). GCI's exceptions are without merit and must be rejected.

IIEC's Arguments Are Incorrect

IIEC, which initially did not propose a labor allocator for Intangible Plant, begins its arguments by, in essence, complaining about the results of ComEd's accounting for both General Plant and Intangible Plant. (IIEC BoE at 4). That IIEC would prefer a methodology that results in lower rates is no surprise, but it is not a valid argument here. Moreover, IIEC's complaint rings hollow when, as shown above, Staff witness Peter Lazare showed that ComEd's jurisdictional General Plant had increased by only 3.97% from Docket 99-0117 to the instant Docket (and that its A&G costs had increased by only 8.41%), and that is before factoring in Staff's own annual inflation rate of 3.5% that it used in its adjustments. (Lazare Reb., Staff Ex. 21.0, Sch. 21.1; *e.g.*, Sant Sup. Dir., Staff Ex. 14.0, Sch. 14.7, line 10).

IIEC next relies on the rejection of "a methodology very similar to that given by ComEd in this case" in Docket 99-0117, asserting that "[t]he only major difference is the addition of Appendices on the subject in this case." (IIEC BoE at 4-5). IIEC's reliance on the Order in Docket 99-0117 and on other Orders (IIEC BoE at 6) is no more valid than that of Staff for the issue at hand. IIEC's attempted dismissal of ComEd's overwhelming evidence, which exceeds in quantity and quality that available in Docket 99-0117, as "the addition of Appendices" is, of course, incorrect. Also, IIEC is arguing against a labor allocator in Docket 01-0432. *Illinois Power Co.*, Docket 01-0432 (Proposed Order Feb. 1, 2002) pp. 13-16.

IIEC suggests that the Order relied only on the quantity of ComEd's evidence, and IIEC argues that sheer numbers of witnesses does not mean a party is right. (IIEC BoE at 5). The

former is false. The Order found that ComEd had proven the correctness of its accounting for General Plant and Intangible Plant (Order at 36), and it expressly referenced not only the quantity but also the "scope and nature" of the evidence (*id.*). IIEC is right that counting witnesses does not prove which party is right, although IIEC overlooks that just because a utility presents more witnesses in the aggregate does not mean that it does so as to each issue. As noted above, counting parties, as the ARES Coalition does, is no more valid.

IIEC suggests that ComEd's restructured balance sheets may not be accurate. (IIEC BoE at 5-6). There is absolutely no evidence for that suggestion. The evidence discussed earlier supporting the balance sheets, regarding the independent auditor's review of them, and regarding the availability to the parties in this Docket for months of the data underlying those balance sheets and the independent auditor's review all stands uncontradicted. IIEC has never even tried to identify a flaw in those balance sheets. IIEC's own witness has acknowledged that direct assignment is more accurate where feasible (Chalfant Dir., IIEC Ex. 2.0 CR, p. 7:15-16; Chalfant Reb., IIEC Ex. 4.0 CR, p. 2:7-16), although he unreasonably will not admit that it is feasible as to any costs here.

Finally, IIEC's suggestion that the Commission has found or can find that all General Plant and Intangible Plant costs are not amenable to direct assignment (IIEC BoE at 7) is unfounded. This is so is illustrated by, among other things, the example of ComEd's Intangible Plant costs, discussed earlier, which consist of just five items, as well as by the fact that ComEd's evidence addressed every individual General Plant and Intangible Plant account. ComEd proved its jurisdictional General Plant and Intangible Plant costs. IIEC, like every other party arguing for a labor allocator, cannot identify a single dollar of General Plant or Intangible

Plant in ComEd's revised proposed jurisdictional revenue requirement that does not belong there, nor any flaw in ComEd's analysis. IIEC's exceptions must be rejected.

3. Known & Measurable Changes to Test Year Plant Balances

Page 40 of the Order approves ComEd's *pro forma* adjustment for certain distribution plant reasonably expected to be (and in fact) placed in service and serving retail customers in the second quarter of 2001, except that it also approves GCI's request, supported by Staff, for a partial disallowance of $11,038,000. GCI suggests that the Order's "Commission Analysis and Conclusion" section on that point be amended to refer to the Order on Remand in Docket 99-0117. (GCI BoE at 18-19). GCI's proposed language change should be rejected.

ComEd, in its Brief on Exceptions, showed that the Order erred in approving that partial disallowance. (ComEd BoE at 13-21; ComEd Exc. at 44). Thus, GCI's request should be moot. Further, on February 14, 2002, ComEd timely filed a detailed 43-page Petition for Rehearing on Remand in Docket 99-0117. In any event, the legal reasons that the Order in the instant Docket errs in approving GCI's and Staff's proposed partial disallowance mean that the ruling here is not and cannot be justified by the Order on Remand in that Docket. (ComEd BoE at 6-7, 16, 18-19).

Page 40 of the Order rejects GCI's proposal for a downward adjustment to ComEd's depreciation reserve of $90,226,000 (only $89,906,000 per GCI's witness), stating: "The Commission however concludes that GCI's proposed depreciation reserve adjustment is flawed for the reasons stated in ComEd's Response above." (Order at 40). GCI takes exception (GCI BoE at 19-21), asserting that its "adjustment is based on the common sense logic that if Edison is permitted to make post-test year additions to rate base, then the utility's accumulated

appreciation [*sic*] reserve should also be adjusted to reflect these *pro forma* adjustments" (*id*. at 19).[†] GCI's exception is wrong on its face and has nothing to do with that logic.

ComEd's Reply Brief already showed that GCI's exception is utterly spurious and improper. As ComEd there stated:

- GCI asserts that the adjustment is appropriate based on ComEd's *pro forma* adjustment for certain distribution plant placed in service in the second quarter of 2001. ComEd in its direct case already made the correct additions to depreciation reserve for that plant. Hill Dir., ComEd Ex. 4.0 CR, pp. 23:486-24:503 & App. C, Sch. B-2.2; Hill Reb., ComEd Ex. 23.0 CR, p. 32:714-16; Hill Sur., ComEd Ex. 45.0, p. 34:725-29. GCI acknowledges that ComEd's adjustment is correct. Effron Dir., GCI Ex. 2.0, p. 40:5-8.

- GCI's proposal ultimately amounts to an unjustified and erroneous attempt to use the depreciation reserve as of June 30, 2001, for all jurisdictional distribution plant, instead of using the figure as of December 31, 2000, adjusted for the impact of the *pro forma* adjustment made in ComEd's direct case. The jurisdictional depreciation reserve for distribution plant is the cumulative depreciation for all such plant. GCI incorrectly ascribes the entire increase in the accumulated depreciation reserve for distribution plant from December 31, 2000, to June 30, 2001, to all distribution plant additions during this six month period, resulting in a massively inflated adjustment, far larger than the correct amount already reflected in ComEd's direct case. Hill Reb., ComEd Ex. 23.0 CR, pp. 32:704-33:727; Hill Sur., ComEd Ex. 45.0, pp. 33:717-34:742.

- GCI's error is clearly evident from Effron Reb., GCI Ex. 5.0, GCI Ex. 5.1, Sch. DJE-6.2. GCI assumes that a $372,098,000 increase in distribution plant over that six month period leads to the $144,732,000 increase in depreciation reserve over this same period by virtue of the adjustment percentage used to calculate its depreciation reserve adjustment. Effron Reb., GCI Ex. 5.0, GCI Ex. 5.1, Sch. DJE-6.2. However, a simple calculation of the resulting depreciation rate for this reserve adjustment for additions during that six month period is 38.9%, or an annual depreciation rate of 77.8% for these additions. That is absurd on its face. The correct annual depreciation rate for high voltage distribution plant is 2.4% and for other distribution plant is 3.6%. Hill Dir., ComEd Ex. 4.0 CR, App. C, Sch. B-2.2. The depreciation reserve adjustment of $90,226,000 proposed by GCI actually can only be an improper test year change to a June 30, 2001, accumulated depreciation reserve amount for all jurisdictional distribution plant. Hill Reb., ComEd Ex. 23.0 CR, p. 32:704-17; Hill Sur., ComEd Ex. 45.0, pp. 33:717-34:742.

[†] The ARES Exceptions Order proposes language appproving GCI's adjustment, but it does not provide any independent rationale for doing so. (ARES Exc. Order at 62)

(ComEd Reply Br. at 24-25 (emphasis added); s*ee also* Order at 39-40).

GCI's argument, that "Edison's arguments do not seriously challenge Mr. Effron's point" (GCI BoE at 19), obviously is false. GCI's Brief on Exceptions completely ignores ComEd's Reply Brief and conveniently purports not to understand the summary of ComEd's responses set forth in the Order. (GCI BoE at 19-20). GCI's putative attempt to refute the notion that its proposed adjustment is for depreciation on distribution plant other than that involved in ComEd's *pro forma* adjustments (GCI BoE at 20-21) does not even attempt to address the points made in ComEd's Reply Brief. Not surprisingly, for example, GCI does not even pretend to explain its absurd annual depreciation rate of 77.8%. The Order is correct. GCI's exceptions here are wrong and must be rejected.

4. Other Adjustments to Rate Base (Non-Plant)

a. Budget Payment Plan Balances

The Order correctly rejects Staff's proposed downward adjustment of $165,000 for Budget Payment Plan Balances. The Order recognizes that such balances are one component of working capital and that, because ComEd did not include working capital as part of the rate base, "…to simply pick out particular working capital items which would result in a downward adjustment to the Company's revenue requirement would be inappropriate." (Order at 41).

Staff now claims for the first time that such balances are <u>not</u> a component of working capital and therefore may be considered in isolation (Staff BoE at 8). Staff cannot cite any evidence for this conclusion because none exists. In fact, the uncontroverted evidence is that ComEd appropriately treats Budget Payment Plan Balances as a component of working capital. (Hill Reb., ComEd Ex. 23 CR, p. 14:303-08; Hill Sur., ComEd Ex. 45, p. 20:427-34). Staff's position is not based upon any record evidence, and should be rejected.

7. Prudence of Distribution Capital Investment Costs

a. Effect of Alleged Imprudence on Rates

GCI and the ARES Coalition contend that ComEd has not proven that the extraordinary expenditures from its two-year recovery program were prudently incurred and reasonable in amount. (GCI BoE at 9; ARES BoE at 31). GCI contends that ComEd's proof consists almost entirely of self-serving, conclusory opinions of ComEd managers and "unsubstantiated, subjective opinion testimony." (GCI BoE at 22-23). Both GCI and the ARES Coalition contend that ComEd was unable to quantify the costs of the program, and that the resulting uncertainty must be construed against ComEd because it has the burden of proof. (GCI BoE at 22; ARES BoE at 32). In their view, ComEd did not establish that its extraordinary program produced "only ordinary expenditures that are representative of its anticipated ongoing costs." (GCI BoE at 23). The ARES Coalition argues that it is "inherently incredible that only ordinary and continuing costs were incurred during a test year that encompassed" the two-year recovery effort. (ARES BoE at 32, 35).

The Order correctly concluded that these arguments are simply inconsistent with the evidence in the record. The record shows that ComEd engaged in an exhaustive analysis of all of the costs that it incurred, disaggregated the components of each major capital expenditure, and ensured that its proposals in this case included only prudent and necessary costs. ComEd did not simply assert that its expenditures were prudent and reasonable, but painstakingly assembled the detailed back-up data demonstrating that no imprudent or unnecessary costs were included in its proposed revenue requirement.

For example, Mr. DeCampli, Exelon Energy Delivery's Vice President of Engineering and Technical Analysis, identified five key projects (LaSalle, Diversey, Ohio, Northwest and

North Huntley) completed during what GCI refers to as ComEd's "two year recovery program." (DeCampli Dir., ComEd Ex. 6.0, p. 15:311-19, ComEd Ex. 6.1). The five projects analyzed involved $171,352,000 in total proposed additions to Distribution Plant. (ComEd Ex. 6.1). Each was described in great detail. Major work was identified. The reasons for the projects were provided. The results of the projects were explained. The costs of the projects were identified. The particular transformers added or ring buses installed were detailed. (*Id*.) All of this was done by Mr. DeCampli as a foundation for testimony that the cost of these facilities was reasonable, prudent, and not inflated. (DeCampli Dir., ComEd Ex. 6.0, pp. 17:367-18:389; DeCampli Reb., ComEd Ex. 26.0 CR, p. 6:156-72). In similar fashion, Mr. DeCampli set out the 24,308 new poles ComEd added to Distribution Plant. He identified the 2,600 miles of overhead conductors, 4,550 miles of underground cables and 19,121 distribution transformers added between 1997 and 2000, as well as numerous other upgrades, replacements and additions to existing substations.

Against this background, Mr. DeCampli and Dr. James B. Williams, ComEd's Vice President, Project and Contract Management, both testified that the additions to Distribution Plant since 1997 were necessary to meet ComEd's obligation to offer and provide delivery services at an acceptable level of reliability. They both testified that the additions were used and useful and installed at a cost that was reasonable and prudent. (ComEd Init. Br. at 49, 51). Both witnesses expressed these conclusions after an extensive process. As Mr. DeCampli described in his testimony at the hearing, his analysis began by reviewing each of the contracts entered into by ComEd for construction of each of the major additions to Distribution Plant. Thereafter, he questioned the project's managers to develop a full understanding of the scope, nature and cost of the project. He compared total project costs at each project to other projects, but determined

that the major projects were all "quite unique." (DeCampli, Tr. 1430:7-10). Based upon that determination, in Mr. DeCampli's words he "had to take that particular project apart." (*Id*. at 1430:10-18). Mr. DeCampli explained that this meant looking at material acquisition costs, use of overtime, use of contracts and construction strategy in order to ascertain whether or not each of those contracts was "in fact, a prudent investment." (*Id*. at 1430:13-18). Based upon his detailed analysis, Mr. DeCampli concluded that the investments were indeed prudent and that the work "was done quite well." (*Id*. at 1430:19-21). Mr. DeCampli followed this same approach for each of the five major projects and each was "evaluated in great scrutiny." (*Id*. at 1431:4-6).

Contrary to GCI's unsupported assertions, ComEd's analysis of these projects was also based upon quantitative data. For example, Mr. DeCampli testified that his analysis went down to the level of specific project component cost. (DeCampli, Tr. 1430:10-18). One of the major components in ComEd's projects that are proposed to be added to Distribution Plant is transformers. GCI, in fact, argues that ComEd bought out complete factories of transformers and, presumably, overpaid to do so. (GCI Init. Br. at 22). Yet, ComEd empirically studied all transformer purchases during the time period 1998 to 2000. There were no significant incremental costs for expedited manufacture in connection with the fifty-nine 138 kV transformers it purchased during that time period. (ComEd Init. Br. at 56-57). Based upon the analysis contained in the record, three different types of 138 kV transformer were surveyed. One type maintained a fixed price throughout the entire 1998-2000 time period. The other two, even during the time period ComEd was supposedly buying out entire factories of capacity, increased in cost only slightly. Prices increased between 1998 and 1999 between 4.9 and 6.8% depending on transformer type. In 1999, the year ComEd began its two year recovery program, prices only

increased 2.2 to 2.3%. (Voltz Reb., ComEd Ex. 24.0 CR, p. 8:147-61). The hard statistical evidence simply does not support GCI's and the ARES Coalition's speculative arguments.

In addition to Mr. DeCampli's analysis, Dr. Williams also scrutinized ComEd's major distribution projects and concluded that there were no excessive costs or "crash program" overpayments of the type that GCI and the ARES Coalition assert must have been made. (Williams, Tr. 860:16-861:6; Williams Reb., ComEd Ex. 25.0 CR, p. 5:96-99). Dr. Williams explained that the project schedule for ComEd's major projects was never accelerated. Nor was the time to perform the work reduced by the payment of incentives. (William Sur., ComEd Ex. 47.0, p. 2:36-39). Instead, ComEd performed the work on a streamlined basis within ComEd's historical project schedule, (*Id*. at 2:28-36), taking advantage of a combination of good weather permitting excavation and foundation work during the winter season and unprecedented levels of cooperation from the City of Chicago during the permitting process. (*Id.*) No premium was paid to any contractor in order to achieve these results. (Williams, Tr. 838:20-839:15; ComEd Init. Br. at 55-56). In fact, in negotiating with ComEd's prime contractor for the major distribution projects, Dr. Williams emphasized that: "[W]e negotiated hard with them on price." "Price was heavily weighted. Price is always heavily weighted, and we endeavor to drive the price as low as we can while getting the quality that we need." (Williams, Tr. 859:14-860:15). There is simply no evidence of any excessive payments or inflated costs. (Williams, Tr. 860:16-861:3).

ComEd Executive Vice President David R. Helwig, who led the distribution system investigation and improvement program, also confirmed the absence of any overpayments or inflated "catch-up" costs. Mr. Helwig has vast experience with distribution construction projects, as well as distribution maintenance and operating expenses. He knows the costs of building and improving distribution facilities. He is intimately familiar with the work that

ComEd performed. And he knows from first-hand experience that the contentions that some unidentified, unnecessary costs must have been incurred are simply baseless. As Mr. Helwig explained:

> ... most of the additional work that we accomplished in this period was accomplished with the same ... level of resources and was achieved without large increases in cost due to major improvements that we made in organization, in management process resulting in significant productivity increases.
>
> Our analysis of many, many accounts of our activities identifies that we accomplished significantly increased amounts of work without incurring increased costs .... [I]n order to control the cost and make sure that we did not incur any additional costs due to short schedules, we used very different contracting techniques, very different forms of contracts, very different commercial structures and had a very different management team in order to accomplish that ....

(Helwig, Tr. 2716:6-2717:7).

Mr. Helwig also explained that, contrary to the contentions of GCI and the ARES Coalition, much of ComEd's new distribution investment was actually made in response to unanticipated load growth and had nothing to do with past maintenance or operations practices. For example, he noted that of the major projects in the City of Chicago, LaSalle, Diversey, and at least a portion of the Northwest project were specifically built for capacity purposes. (Helwig, Tr. 2624:16-18). Mr. DeCampli confirmed this testimony. He pointed out that ComEd's net peak weather adjusted system load increased 3.9% and 4.2% during the years 1998 and 1999, a number that was double the historic average over the prior 7 years. (DeCampli, Tr. 1432:4-10). As Mr. DeCampli testified, this doubling of anticipated load translates into a requirement for construction of five more substations (of ComEd's most utilized type) at some location in ComEd's system. (DeCampli Sur., ComEd Ex. 48.0, p. 5:100-14). This sharp increase in demand was a major factor requiring increased distribution system expenditures.

Mr. Helwig also responded to the contention that ComEd should have maintained records that categorized each distribution expenditure, indicating the portion of every dollar spent that was attributable, for example, to load growth or increasing reliability requirements or the need to update and improve existing capacity. He explained that ComEd follows standard business practices, tracking costs by work activity or project, not by the reason for making particular expenditures. (Helwig, Tr. 2664:10-16). Accordingly, ComEd's accounting system provides detailed information that can be retrieved by project, contractor, equipment, component, etc. Projects and equipment are not tracked by rationale because a particular project is never undertaken for a single reason. (DeCampli, Tr. 1423:8-1424:1). Further, because projects evolve and change over time, attributing particular expenditures as "catch-up" costs rather than ordinary course expenditures based upon when they occurred is simply not possible. (DeCampli Sur., ComEd Ex. 48.0, p. 7:147-59).

The records of distribution expenditures that ComEd maintained and made available through discovery were detailed and comprehensive. They included over 30,000 pages relating to the planning and project management of virtually every recent material project or system program. (Juracek Sur., ComEd Ex. 41.0, pp. 8:206-9:245). The records provided specific details of each major project, including project schedules, contract price, and contract terms and conditions. (Williams Sur., ComEd Ex. 47.0, pp. 5:103-6:127). The contention that there was some failure of proof or that ComEd was less than forthcoming in responding to discovery requests is simply false.

If there is anything noteworthy about the discovery process in this proceeding it is not some inadequacy about ComEd's discovery responses, because they were more than adequate, particularly given the extraordinary volume and scope of the requests to which it responded

within a very short period of time. The noteworthy aspect of the discovery process is that ComEd produced the very documents that GCI says it needed, and GCI's experts failed to look at the vast majority of the material provided. It goes without saying that GCI's failure to make more than a cursory review of the detailed data ComEd produced provides absolutely no basis for finding that ComEd failed to meet its burden of proof. ComEd met its burden with detailed evidence, and it backed up its evidence with a massive production of every document necessary for GCI and the ARES Coalition to assess that evidence.

The result of this thorough process bears repeating. With the exception of several issues raised by Staff witness Bruce Larson and answered in detail by ComEd, not one instance of any enhanced, inflated or escalated costs has been identified by any witness for any plant, substation or other facility. (Effron, Tr. 2106:2-15; Schlissel, Tr. 2209:6-12). The Order's finding that ComEd met its burden of proof is clearly correct and the contentions of GCI and the ARES Coalition to the contrary should be rejected.

b. Prudence of Specific Distribution Capital Investments in Rate Base

The absence of any evidence in support of GCI's and the ARES Coalition's contentions about imprudent expenditures is tellingly provided by the failure of either party to address this key section of the Commission's briefing outline. It is this section that calls for a discussion of the evidence demonstrating that some distribution project or expenditure was imprudent and should be disallowed. Although introductory sections of the GCI and ARES Coalition briefs are heavy on rhetoric about imprudence, when the opportunity to be specific and to provide support for that rhetoric arrives, GCI and the ARES Coalition provide nothing.

The omission is not rectified elsewhere in the briefs. The proof to support GCI's and the ARES Coalition's position is simply lacking. In fact, GCI witness Schlissel conceded that he

made no project by project analysis in order to distinguish between the prudent cost of a sustained planned maintenance program and the imprudent cost of "catch up". (Schlissel, Tr. 2196:21-2197:3). Mr. Schlissel could not even describe in his testimony a methodology that could be used for such an analysis. Nor could he identify one ComEd document that identified a project cost that would not have been incurred, but for past imprudence. (Schlissel, Tr. 2222:9-2224:6). Similarly, GCI witness Effron testified that he performed no analysis or study whatsoever of which plant, substation, or line he thought might have involved enhanced or inflated cost due to imprudence. (Effron, Tr. 2106:9-15). Nor could he tell the Commission to what extent the cost of Distribution Plant additions were necessary to deal with unanticipated load growth. (Effron, Tr. 2106:2-8). Finally, GCI's Mr. Bodmer acknowledged that he expressed no opinion whatsoever about the five major distribution projects analyzed in detail by Mr. DeCampli and Dr. Williams; the prudence of ComEd's additional 24,308 new distribution poles; the 2,600 additional miles of distribution overhead conductors, ComEd's 4,550 miles of underground distribution cables; or ComEd's 19,121 added distribution transformers. (Bodmer, Tr. 1846:18-1849:1). In fact, he conceded that he expressed no opinion about the prudence or cost of any individual distribution capital project performed by ComEd after 1997. (Bodmer, Tr. 1849:2-1850:9).

The ARES Coalition essentially acknowledges that its claims are not based on evidence, but rather on pure speculation when it explains that it simply relies on its belief that "it is inevitable that some currently unknown amount of investment and operating expense was incurred that would not have been incurred but for Edison's imprudence." (ARES BoE at 41). Such speculation provides no basis for the findings of imprudence and the disallowances of

distribution expenditures that GCI and the ARES Coalition seek. The Order correctly rejects their claims and the proposed revisions to its findings are unsupported by anything in the record.

8. Other Rate Base Issues

D. Operating Revenues and Expenses

3. Operating Expenses

a. Functionalization of Generation, Transmission, and Distribution Expenses

Pages 55-56 of the Order correctly finds that ComEd properly functionalized its jurisdictional operating expenses. The ARES Coalition complains about "at least $39.5 million in expenses from accounts that were allocated to supply in the 1999 DST case" (referring to certain incentive compensation costs) and about $27 million in operating expenses that were refunctionalized from the transmission function to the distribution function under the FERC's "seven factor" test. (ARES BoE at 43-44; ARES Exc. Order at 82-84). The ARES Coalition's arguments are not only false and disingenuous. That GCI now supports the ARES Coalition's positions on this subject (GCI BoE at 24-26) is unfortunate, but that does not alter that the Order is right and that the ARES Coalition and now GCI are wrong:

- First, ComEd submitted overwhelming and in all relevant respects uncontradicted evidence that it correctly functionalized all of its jurisdictional operating expenses, *i.e.*, its jurisdictional distribution, customer, Administrative and General, and system black start expenses, as well as the associated depreciation and amortization expenses and taxes other than income taxes. (*E.g.*, Hill Dir., ComEd Ex. 4.0 CR, pp. 14:285-21:448, 25:531-29:607, Att. B, Att. C and Schs. A-2, A-5 - A-6.1, C-1 - C-22; Voltz Dir., ComEd Ex. 5.0, pp. 1:12-15, 16:332-17:365, 18:377-19:401; Heintz Dir., ComEd Ex. 14.0 CR, pp. 9:160-10:175, 21:387-22:405; Sterling Dir., ComEd Ex. 16.0, pp. 4:74-11:232, 12:252-22:478, 29:618-626; Born Dir., ComEd Ex. 17.0, p. 1:7-9, 4:77-7:147; Hill Reb., ComEd Ex. 23.0 CR, pp. 4:82-9:183, 9:187-14:299, 17:363-20:434, 21:449-68, 28:610-29:635, 30:666-34:749; Heintz Reb., ComEd Ex. 33.0, pp. 10:230-11:255; Hill Sup. Reb., ComEd Ex. 38.0 CR, pp. 12:260-13:291; Hill Sur., ComEd Ex. 45.0, pp. 5:88-7:146, 13:278-20:422,

22:466-24:513, 26:550-27:566, 29:618-33:712, 36:780-38:812; Heintz Sur., ComEd Ex. 57.0, pp. 2:34-3:54). The evidence that the $66.5 million in costs at issue are costs of performing the distribution function (*e.g.*, Hill Sur., ComEd Ex. 45.0, p. 23:478-24:506) is uncontradicted. No party submitted any evidence identifying any flaw in ComEd's analysis of any of the costs at issue, nor any evidence that these costs were not in fact incurred in performing the distribution function. (The ARES Coalition's and GCI's exceptions to the Order on the subject of A&G costs and incentive compensation costs also are shown to be without merit in Section II.D.3.b and II.D.3.d.xiii, *infra*.)

- Second, all of the $66.5 million in costs at issue were recorded in FERC distribution Accounts in ComEd's 2000 FERC Form 1, and none ever was recorded in a FERC "supply" (a/k/a generation or production) Account. Through 1999, the corresponding incentive compensation expenses were recorded in FERC Accounts 920-921, which are A&G expense Accounts, not supply Accounts. (*E.g.*, Hill Reb., ComEd Ex. 23.0 CR, pp. 34:751-35:771; Hill Sur., ComEd Ex. 45.0, pp. 22:474-77, 23:492-506). Beginning in 2000, the relevant incentive compensation costs were recorded in FERC Account 580, a distribution operating expense account, because they are based on incentive plans that provide incentives for the performance of ComEd employees performing the distribution function. (*E.g.*, Hill Reb., ComEd Ex. 23.0 CR, pp. 34:756-758, 35:782; Hill Sur., ComEd Ex. 45.0, p. 23:478-24:506). As the ARES Coalition now admits, the $27 million in refunctionalized expenses were refunctionalized under FERC's "seven factor" test from FERC transmission Accounts, not production Accounts, to the distribution function, and they accordingly were recorded as distribution costs in ComEd's 2000 FERC Form 1. (*E.g.*, Hill Reb., ComEd Ex. 23.0 CR; pp. 34:763-35:766; Hill Sur., ComEd Ex. 45.0, pp. 22:474-23:491; ARES Init. Br. at 13; ARES BoE at 43).

- Third, ComEd did not record all incentive compensation costs in FERC distribution Accounts in the 2000 FERC Form 1, it recorded the incentive compensation costs for the production function in FERC production Accounts in the Form 1. (Hill Sur., ComEd Ex. 45.0, p. 23:498:-24:505). Yet, tellingly, the ARES Coalition and GCI do not propose to allocate any of those incentive compensation costs to distribution using the labor allocator or any other mechanism, even though the same process that ComEd used to record some costs in distribution also recorded those other costs in production. (*Id*.)

- Fourth, the ARES Coalition and GCI have mischaracterized the Commission's ruling in Docket 99-0117. There, the Commission allocated all A&G costs among the supply, transmission, and distribution functions using a general labor allocator -- it did not hold that all A&G costs in general, or all incentive compensation costs in particular, were supply costs. *Commonwealth Edison Co.*, Docket No. 99-0117 (Order August 26, 1999) p. 27. Also, the Commission made no ruling in Docket 99-0117 even remotely implying that refunctionalized transmission costs were supply costs.

- Fifth, the ARES Coalition's arguments here, which are partially echoed by GCI, are founded on disingenuous attempts to paint ComEd's general ledger, CBMS, as some sort of mysterious and dubious new entity and to distort the facts regarding Staff's field audit and relevant testimony. (*See Section* II.C.2, *supra*).

- Sixth, the refunctionalization of the $27 million in operating expenses that is reflected in ComEd's year 2000 FERC Form 1 was the product of correct analysis consistent with the FERC's "seven factor" test, so the ARES Coalition's assumption that that refunctionalization of expenses somehow was simply the product of CBMS is incorrect; rather, the data in the FERC Form 1 and CBMS reflects ComEd's analysis. (Sterling Dir., ComEd Ex. 16.0, pp. 12:253-15:314; Born Dir., ComEd Ex. 17.0, pp. 4:71-7:147; Hill Reb., ComEd Ex. 23.0 CR; pp. 34:763-35:766; Hill Sur., ComEd Ex. 45.0, pp. 22:474-23:491).

- Finally, only approximately $41 million of the approximately $66.5 million in costs at issue are even included in ComEd's revised proposed jurisdictional revenue requirement. ComEd, in its surrebuttal testimony, while disagreeing that it was warranted, accepted Staff's revised downward adjustment that disallows nearly $25 million of ComEd's incentive compensation costs, and the Order approves that revised adjustment, correctly finding that the evidence proved that the remaining allowed incentive compensation costs benefit delivery services customers and improve the efficiency of ComEd's operations. (Order at 101-103; Hill Sur., ComEd Ex. 45.0, p. 38:815-21).

The ARES Coalition also throws in three additional erroneous arguments for denying ComEd its costs. The ARES Coalition suggests that allowing ComEd to recover the proven costs at issue has "clearly demonstrated adverse effects on customer choice." (ARES BoE at 44). There is no evidence of any such effects, and, in any event, ComEd is entitled as a matter of law to cost based rates and full recovery of its costs of providing delivery services. 220 ILCS 5/16-108(c). The ARES Coalition also warns of "the risks associated with locking in decisions now that will flow through into the 2005 bundled services rate case." (ARES BoE at 44). That warning is unsupported and false. (Order at 20-21). The ARES Coalition further asserts that: "Disallowance of collection through delivery charges for these categories at this time merely means collection through the CTC, and Edison could revisit the question of 're-functionalization' of costs in the 2005 rate case." (ARES BoE at 44). The law does not permit ComEd to recover, and there is no evidence that ComEd can or does recover, 100% of its stranded costs through

CTCs, especially given the mitigation factor. 220 ILCS 5/16-102, 16-108. Moreover, the ARES Coalition does not even attempt to explain how including these costs in jurisdictional delivery services rates could affect competition if there would be full CTC offsets. Also, even if the ARES Coalition's CTC argument here were not false, that would not justify rates that are not cost based or the disallowance of proven costs of providing jurisdictional delivery services. 220 ILCS 5/16-108(c).

Finally, the ARES Coalition also suggests that ComEd should be forced to undergo some unspecified process with Staff and prospective intervenors to assure that Staff and the Commission are "comfortable" with CBMS. (ARES BoE at 44). That is not required or necessary. CBMS is ComEd's general ledger and as such is subject to, among other things, annual audit and interim audit processes, as shown in Section II.C.2, *supra*. Moreover, Staff performed a field audit in this Docket, was given a presentation on CBMS, and was given the opportunity to obtain information about and from CBMS, as shown there. Staff has submitted no complaint about CBMS. Not only that, but the Commission has various investigatory powers under the Act, including in relation to examining a utility's books and records (*e.g.*, 220 ILCS 5/5-101), and the ARES Coalition identifies no respect in which Staff was or is unable to obtain any information Staff needs about or from CBMS. Indeed, as noted earlier, a wealth of information about CBMS and data therein was available for several months to the parties in this Docket, and no party showed even a single flaw in ComEd's analysis of the costs at issue or CBMS. The ARES Coalition's and GCI's exceptions must be rejected.

b. A&G Expenses – Direct Assignment and Allocation

Pages 61-62 of the Order correctly approve ComEd's accounting for its A&G costs. Staff, the ARES Coalition, GCI, and the IIEC all take exception and make or support varying

proposals for use of labor allocators across the board to allocate those costs. (Staff BoE at 10-15; ARES BoE at 8, 44-45; ARES Exc. Order at 84-91; GCI BoE at 26-27; IIEC BoE at 7-10). Only GCI and the IIEC argued for a labor allocator in direct testimony. Staff did so only in rebuttal. The ARES Coalition filed no testimony on the subject other than a few attacks on ComEd and its general ledger in rebuttal.

ComEd submitted overwhelming detailed evidence that proved the accuracy of its accounting for its A&G costs and its underlying analysis, as discussed below. No party has submitted evidence showing otherwise, just as was the case in relation to ComEd's accounting for its General Plant and Intangible Plant costs. (*See* Section II.C.2, *supra*).[†]

The oft-repeated complaint of some parties that executive compensation costs, in particular, are not amenable to direct assignment (*e.g.*, IIEC Init. Br. at 6; Staff BoE at 10, 11), ignores that ComEd in its analysis of A&G costs allocated executive compensation costs using the same labor allocator that GCI and the IIEC propose. (*E.g.* Hill Dir., ComEd Ex. 4.0 CR, App. B; Hill Reb., ComEd Ex. 23.0 CR., p. 8:172-75; Hill Sur., ComEd Ex. 45.0, p. 15:312-18; Chalfant, Tr. 2556:22-2557:3). The arguments of Staff, the ARES Coalition, GCI, and the IIEC here are without merit, and their exceptions must be rejected.

ComEd has submitted overwhelming and in nearly all respects uncontradicted evidence that it has correctly functionalized its A&G expenses. ComEd proved that it used direct assignment only where that could be done accurately and where the requisite data were available, and that those A&G costs that could not be directly assigned were allocated using appropriate allocators based on cost causation. (Hill Dir., ComEd Ex. 4.0 CR, pp. 1: 20-2:22, 17:345-18:369

[†] While not agreeing that it is warranted, ComEd, in its Brief on Exceptions, in order to narrow the issues, has accepted part of Staff's proposed adjustment to "research and development" costs, which are A&G costs. (ComEd BoE at 47).

and Att. B (summarizing the A&G study and noting that CBMS was particularly helpful as to those costs);[†] Heintz Dir., ComEd Ex. 14.0 CR, pp. 9:160-10:175, 21:387-22:405; Hill. Reb., ComEd Ex. 23.0 CR, pp. 4:82-9:183; Heintz Reb., ComEd Ex. 33.0, pp. 10:230-11:255; Hill Sur., ComEd Ex. 45.0, pp. 5:88-7:146, 13:278-20:422; Heintz Sur., ComEd Ex. 57.0, pp. 2:34-3:54; *see also* Hill Dir., ComEd Ex. 4.0 CR, pp. 1:19-20, 8:149, 8:153-55, 8:160-9:186 and Att. B (General Plant and Intangible Plant); Heintz Dir., ComEd Ex. 14.0 CR, pp. 16:288-21:385 (General Plant and Intangible Plant); Hill Sur., ComEd Ex. 45.0, pp. 7:147-13:276, 19:400-20:422 (General Plant and Intangible Plant)).

While Staff, the ARES Coalition, GCI, and the IIEC have asserted, as they did in relation to General Plant and Intangible Plant costs, that ComEd's accounting and analysis of its A&G costs should be rejected, those parties do not challenge the accuracy of ComEd's analysis (which included a ten-page study supported by 82 pages of extremely detailed workpapers) in any respect, except to a very limited degree by Staff. Indeed, the IIEC's witness admitted that he did not even review all of that analysis (Chalfant, Tr. 2554:7-16), nor apparently did those other parties witnesses did so, although some Staff witnesses did review some portions.

Staff asserts that the Order here ignored "the clear and compelling evidence favoring the labor allocator…." (Staff BoE at 10). The Order devoted nearly three single-spaced pages just to discussing Staff's evidence and arguments here. (Order at 56-59). The Order also discussed the ARES Coalition's, GCI's, and the IIEC's arguments. (*Id*. at 59). The Commission Analysis

[†] Beginning on January 1, 1998, ComEd, "adopted an activity-based cost tracking and reporting process that is supported by a new general ledger accounting system -- the Competitive Business Management System ('CBMS'). CBMS allows for transactions to be recorded using a variety of identifying characteristics. These characteristics include business unit, funding center department, activity description, account charged, project (if applicable), and cost type (labor, contractors, materials, etc). A&G expenses for the 2000 test year were directly assigned to the Delivery Services function using the activity-based information contained in CBMS, and/or using analyses or other appropriate documentation of the costs being assigned." (Hill Dir., ComEd Ex. 4.0 CR, App. B, p. 2:24-34).

and Conclusion section is nearly one page long and, far more importantly, it is clear, cogent, and correct. (*Id.* at 61-62).

Staff once more relies on the Order in Docket 99-0117 and other prior Orders, and seeks to distinguish the Order in Docket 99-0013 on the theory that ComEd's evidence is insufficient. (Staff BoE at 10-11, 13-14). As discussed in Section II.C.2, *supra*, and as shown above, Staff's arguments in relation to those Orders and ComEd's evidence fail. Among other things, as shown in Section II.C.2, *supra*, Staff's assertion that the Order in Docket 99-0117 "opposed the direct assignment approach as a general principle" (Staff BoE at 13) is an overstatement and ignores the Order on Rehearing in that Docket.

Staff asserts that having a "double standard in favor of those utilities that disregard Commission opinions over utilities that adhere to those opinions" "would be a dangerous precedent indeed". (Staff BoE at 14). ComEd has neither disobeyed nor circumvented any Commission Order. It presented evidence here that not only supports, but mandates, a different result than in Docket 99-0117. To the contrary, the more dangerous precedent would be a Commission Order in this case that is not consistent with the law and is not based exclusively on the evidence in the record in that proceeding. 220 ILCS 5/10-103, 10-201(e)(iv); *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 201, 227, 555 N.E.2d 693, 697, 709 (1989). Also, Staff admits at least that the issue at hand should not be resolved solely on the basis of prior Commission Orders. (Staff BoE at 10). In fact, the law is clear that prior Commission Orders are not *res judicata*. (*See* Section II.C.2, *supra*). Moreover, Staff's claim is undercut by the facts that, as discussed earlier, Staff witness Peter Lazare showed that ComEd's jurisdictional General Plant had increased by only 3.97% from Docket 99-0117 to the instant Docket and that its A&G costs had increased by only 8.41%, and

that that is before factoring in Staff's own annual inflation rate of 3.5% that it used in its adjustments. (Lazare Reb., Staff Ex. 21.0, Sch. 21.1; *e.g.*, Sant Sup. Dir., Staff Ex. 14.0, Sch. 14.7, line 10). In any event, Staff itself in Docket 99-0117, in this Docket, and in other prior and pending Dockets has opposed methodologies approved, or proposed methodologies rejected, in prior Commission Orders, and Staff even in the current delivery services rate cases is proposing inconsistent labor allocators. (*See* Section II.C.2, *supra*).

Staff also theorizes that because the results of ComEd's analyses differ from those in Docket 99-0117, ComEd must have employed inconsistent approaches. (Staff BoE at 12). Staff's inference is not logical and itself is inconsistent. (*See* Section II.C.2, *supra*; Staff BoE at 13 (Staff's simultaneous inconsistent argument that "the Company is essentially recycling a proposal that the Commission has already found to be deficient")). Staff is correct that in Docket 99-0117, unlike here, ComEd did not use a number of employees allocator for FERC Accounts 920-922 (Staff also refers to Account 923 but the evidence Staff cites does not address that Account). (Staff BoE at 12-13). However, Staff simply fails to provide any evidence or explanation that transforms that difference, or any other alleged difference between the methods in the two Dockets, into a reason to reject ComEd's accounting and analysis in this Docket. Staff cannot credibly do so given, among other things, that it is proposing different versions of its labor allocator in different Dockets at the same time.

Staff reiterates that there are A&G costs that cannot be directly assigned. (Staff BoE at 14). That is true. What Staff does not and cannot do, however, is point to any evidence that ComEd's analysis directly assigned any A&G cost that cannot be directly assigned. Indeed, one of Staff's witnesses argued as to certain A&G costs that the Company should have done more direct assignment. (Bowers, Staff Ex. 4.0, pp. 6:133-7:145).

Finally, Staff relies on the IIEC's position and on reiterating Staff's arguments about ComEd's sale of its fossil units in 1999. (Staff BoE at 14-15). Those arguments already have been refuted. (*See* Section II.C.2, *supra*, and *see infra*). Staff's exceptions must be rejected.

The ARES Coalition and GCI offer nothing here that was not addressed by ComEd in Section II.C.2, *supra*. (ARES BoE at 8, 44-45; GCI BoE at 26-27). Also, GCI's witness admitted that direct assignment is more accurate when costs are amenable to direct assignment and can be attributed solely to a particular function. (Effron, Tr. 2081:19-2082:3). Thus, their exceptions, too, must be rejected.

The IIEC, while primarily repeating what it said in relation to ComEd's General Plant and Intangible Plant costs, which was refuted in Section II.C.2, *supra*, does offer some different arguments as to A&G costs. (IIEC BoE at 7-10). Again, the IIEC's witness also has admitted that direct assignment is more accurate where feasible (Chalfant Dir., IIEC Ex. 2.0 CR, p. 7:15-16; Chalfant Reb., IIEC Ex. 4.0 CR, p. 2:7-16), although he unreasonably will not admit that it is feasible as to any costs here. In any event, the IIEC's additional arguments, like their predecessors, are without merit. The IIEC's heavy reliance on the Commission's Order in Docket 99-0117 (IIEC BoE at 7-8) overlooks the Order on Rehearing in that Docket, while the IIEC's slighting of the Order in Docket 99-0013 overlooks, among other things, that that Order, like the Order on Rehearing in Docket 99-0117, is more recent than the Orders that the IIEC cites. Of course, what really matters is what is right under the law and the evidence in the record in this Docket. The IIEC's reliance on prior Orders is unwarranted for the reasons discussed in Section II.C.2, *supra*. Also, the IIEC itself is opposing a labor allocator in Docket 01-0432. *Illinois Power Co.*, Docket 01-0432 (Proposed Order Feb. 1, 2002) pp. 13-16.

The IIEC seeks to rationalize the facts that it cannot identify any flaw in ComEd's analysis, and that the IIEC's witness did not even review all of it, on the theory that the Order also rejects ComEd's positions on other subjects where ComEd submitted massive amounts of data, specifically mentioning ComEd's marginal cost of delivery services study and its supporting workpapers. (IIEC BoE at 8-9). That is not logical. The question here is whether ComEd's analysis on the subject at issue is correct. It is. Moreover, the Order rejects ComEd's marginal cost ratemaking approach not because the study or the workpapers were wrong but on other grounds (which ComEd disputes (ComEd BoE at 3, 50-55)). (Order at 116). There are no valid grounds for rejecting ComEd's analysis here. If the IIEC once again is attempting to establish the principle that submitting a great volume of evidence does not necessarily mean that a party is right, so be it, but the IIEC's inability to identify any flaw in ComEd's A&G analysis, and the IIEC's witness not even reading all of it, coupled with the absence of any evidence from any party refuting ComEd's compelling showing, is conclusive. The IIEC's tardy attempt to suggest that ComEd's analysis may be flawed (IIEC BoE at 9) suffers from the lack of any specific flaw even being alleged. The record shows none.

Finally, the IIEC cites a 1973 NARUC manual and two 1978 FERC Orders. (IIEC BoE at 9). The IIEC can point to nothing in any of those documents that casts any doubt on ComEd's analysis in this Docket. Indeed, with the IIEC being one of those parties that felt no compunction about advocating embedded cost ratemaking in Docket 99-0117 despite nearly two decades of Commission Orders supporting marginal cost ratemaking, and with the IIEC opposing a labor allocator in Docket 01-0432, the IIEC is poorly situated to make those kinds of arguments. The IIEC's reliance on FERC decisions also is erroneous. Alan Heintz, former Section Chief in FERC's Division of Applications, debunked that claim, showing that it no

longer reflects FERC's actions. (Heintz Dir., ComEd Ex. 14.0 CR, p. 2:29-32; Heintz Reb., ComEd Ex. 33.0, p. 11:240-55; Heintz Sur., ComEd Ex. 57.0, pp. 2:34-3:54). On cross-examination, IIEC's witness acknowledged that. (Chalfant, Tr. 2557:9-21). Moreover, even were FERC ardently committed to a labor allocator for transmission rates, that would not justify its use here, where direct assignment is feasible or a more accurate allocator is available. While the Commission is to defer to FERC as to FERC-jurisdictional rates, 220 ILCS 5/16-108(a), it is required to set jurisdictional delivery services rates that allow ComEd full cost recovery and are cost based. 220 ILCS 5/16-108(c). The labor allocator does not do that. The IIEC's exceptions must be rejected.

c. Proposed Known and Measurable Changes to Test Year Expenses

(ii) "Levelization" Adjustments

(a) Tree Management Expense

The Order rejected ComEd's proposal, made in its direct case, that its test year tree management costs of $46,871,000 be reduced by $513,000 based on a three year (1998-2000) average of those costs (not corrected for inflation). (Order at 65). The Order instead adopted GCI's proposal that those costs be reduced by an additional $4,703,000 -- i.e., a total of $5,216,000 -- based on a six year (1995-2000) average of those costs (also not corrected for inflation). (*Id.*) The Order stated that Staff's proposal that those costs instead be reduced by an additional $7,028,000 -- i.e., a total of $7,541,000 -- based on an eight year (1993-2000) average of those costs (corrected for inflation) reasonable, but did not adopt it. (*Id*.)

Staff, in its Brief on Exceptions, contends in a cursory fashion that its proposal should be adopted. (Staff BoE at 16). Staff errs. ComEd, in its Brief on Exceptions, has shown that the

Order should have adopted ComEd's proposal, and that GCI's and Staff's huge additional downward adjustments are unwarranted. (ComEd BoE at 29-32; ComEd Exc. 68-71).

Staff's proposal, like that of GCI, relies on the fact that ComEd engaged in 20 months of accelerated tree trimming (from October 1998 to May 2000), just five of which were in the test year. (Order at 63-64). Staff also points to ComEd's testimony in 1999 in Docket 99-0117 about ComEd's projection of its tree trimming costs for 2001. (*Id*. at 64). Staff errs:

- The evidence demonstrates that a three-year levelization period for tree management expenses is appropriate given the specific activity and funding levels in those three years and going forward. (Voltz Dir., ComEd Ex. 5.0, pp. 21:443-23:485; Hill Dir., ComEd Ex. 4.0 CR, App. C, Sch. C-2.11; Voltz Reb., ComEd Ex. 24.0 CR, pp. 15:315-17, 16:323-35; Voltz Sur., ComEd Ex. 46.0, pp. 16:350-18:399; Voltz, Tr. 1992:8-21). Neither GCI nor Staff has shown any error in ComEd's analysis.

- ComEd's tree management activities and funding levels pre-1998 were insufficient for the four-year cycle and the resulting higher level of reliability that ComEd now is achieving, so levelizing using pre-1998 data is erroneous and unfair. Moreover, GCI and Staff have chosen periods that plainly are biased to produce too large a total downward adjustment. (Voltz Reb., ComEd Ex. 24.0 CR, pp. 14:282-15:300; Voltz Sur., ComEd Ex. 46.0, pp. 16:350-18:399). Cross-examination of Staff's and GCI's respective witnesses confirmed the invalidity and mathematical biases of their proposals. (Jones, Tr. 1704:8-1712:4; Effron, Tr. 2021:7-2022:5, 2038:5-2043:16; Schlissel, Tr. 2185:16-2187:14, 2187:20-2188:3). Also, averating in years used before the test year used in Docket 99-0117 is inappropriate.

- The evidence does not support the assumption that the accelerated tree trimming in fact incrementally increased ComEd's costs. Depending on the circumstances, accelerated tree trimming may decrease, not increase costs; yet, neither Staff's nor GCI's witnesses made any independent determination that any such increase in fact occurred. (Voltz Reb., ComEd Ex. 24.0 CR, p. 16:318-25; Voltz Sur., ComEd Ex. 46.0, pp. 16:367-17:384; Jones, Tr. 1704:8-1712:4).

- The estimates made in 1999 regarding ComEd's tree management expenses in 2001 are outdated, and ComEd's tree management budget for 2001, in which no accelerated tree trimming occurred, in fact was approximately $42,950,000. (Voltz Sur., ComEd Ex. 46.0, p. 18:385-91). Staff's and the Order's reliance on the estimate made in 1999 in the face of the 2001 budget therefore is erroneous. GCI's proposed additional downward adjustment results in a figure that is $1,295,000 lower than the 2001 budget, while Staff's proposed additional downward adjustment results in a figure that is $3,620,000 lower than the 2001

budget. There is no valid reason for an adjustment that drives the figure below the 2001 budget. Moreover, under no circumstances can GCI's and Staff's proposed additional downward adjustments, especially the latter, be deemed reasonable in light of the 2001 budget.

- Finally, even assuming, incorrectly, that the evidence showed that ComEd's 20 months of accelerated tree trimming incrementally increased ComEd's tree management expenses, that simply does not warrant GCI's and Staff's respective 72- or 96-month levelization periods, especially when it is undisputed that ComEd's pre-1998 activities and costs are not representative of ComEd's activities and costs going forward. Even if ComEd's three-year levelization period were to be rejected, then the next most reasonable levelization period would be 48 months, 1997-2000, which would result in a further $545,000 downward adjustment (corrected for inflation) on top of ComEd's initial proposed $513,000 downward adjustment, resulting in a total downward adjustment of $1,058,000. (Voltz Reb., ComEd Ex. 24.0 CR, pp. 16:336-17:347; Voltz Sur., ComEd Ex. 46.0, p. 18:392-99).

Staff routinely criticizes ComEd for submitting evidence of projected costs when they show new costs or cost increases. (*E.g.*, Order at 37-38). Yet, Staff here offers no explanation of how Staff consistently can advocate a downward adjustment based on ComEd's 1999 testimony in Docket 99-0117 projecting costs in 2001, particularly in the face of uncontradicted evidence in the instant Docket of, among other things, the facts that that 1999 projection is obsolete and that Staff's downward adjustment would set a cost level that is $3,620,000 below the 2001 budget. ComEd's exceptions should be approved, and Staff's rejected.

(b) Storm Restoration Costs

The Order rejected ComEd's proposal, made in its direct case, that its test year variable storm damage restoration costs of $18,668,000 be reduced by $2,946,000, or nearly 16%, based on a three year (1998-2000) average of those costs (not corrected for inflation). (Order at 68). The Order instead adopted GCI's proposal that those costs be reduced by an additional $5,771,000 -- i.e., a total of $8,717,000, or nearly 47% -- based on a five year (1996-2000) average of those costs (also not corrected for inflation), consistent with the Commission's approval of a five year average of storm restoration costs in Docket 99-0117. (*Id.*) The Order

did not adopt Staff's proposal that those costs instead be reduced by an additional $10,505,000 -- i.e., a total of $13,451,000, or over 72% -- based on a nine year (1993-July 2001) average of those costs (corrected for inflation). (*Id*.)

Staff, in its Brief on Exceptions, contends that its proposal should be adopted. (Staff BoE at 16-18). Staff errs. ComEd, in its Brief on Exceptions, has shown that the Order should have adopted ComEd's proposal, and that GCI's and Staff's huge additional downward adjustments are unwarranted. (ComEd BoE at 32-37; ComEd Exc. at 71-74).

Only ComEd's proposal is consistent with the uncontradicted evidence that ComEd made massive changes in its storm restoration policies and practices beginning in 1998 that have contributed to approximately 40% reductions in ComEd's Customer Average Interruption Duration Index and its Customer Average Interruption Frequency Index. (ComEd BoE at 32-37; ComEd Exc. at 71-74). Moreover, only ComEd's proposal is consistent with the uncontradicted evidence that ComEd implemented a new accounting system on January 1, 1998 (CBMS), that makes comparison of pre-1998 variable storm restoration cost data with later cost data difficult and inappropriate, because costs that previously were recorded in other areas now appropriately are recorded in storm related projects. (ComEd BoE at 34).

Staff, in its Brief on Exceptions, principally argues that its nine year average is more reasonable than GCI's five year average because the longer average relies on more data and is necessary here because of "extraordinary variations in costs".[†] (Staff BoE at 17). Staff -- like GCI, the ARES Coalition (which submitted no evidence on this subject, but supported GCI's

[†] Staff elsewhere chastises ComEd for making proposals that Staff believes are inconsistent with methodology determinations in prior Commission Orders (*e.g.*, Order at 31-34), yet Staff here does not attempt to distinguish Staff's proposal for a four year storm restoration costs levelization period in Docket 99-0117, Staff's objection to a five year period there, and the Commission's approval of a five year period there. (Staff BoE at 17-18; *Commonwealth Edison Company*, Docket 99-0117 (Order Aug. 26, 1999) pp. 34-35).

proposal), and the Order -- thus errs, and does so unjustly, by placing no weight on the changes discussed above and instead attributing 100% of the higher test year and 1998-2000 average costs purely to variations in the weather. ComEd's average costs in the 1998-2000 period are higher than a five or nine year average, but the main reasons for that variance are ComEd's changes in its policies and practices and its accounting system. (*E.g.*, ComEd BoE at 34). Staff's tacit assumption, that ComEd had to disprove speculation that the variance is attributable solely to the weather, is unreasonable and unwarranted, and ignores that the relation of the changes to the increased expenses is clear. (*E.g., id.* at 35). Also, averaging in years used before the test year used in Docket 99-0117 is inappropriate.

Staff in evidence admitted that there were such changes, although Staff did not correctly recognize the nature and implications of the changes. (Sant Dir., Staff Ex. 3.0, pp. 15:295-16:314; Sant Reb., Staff Ex. 17.0 CR, pp. 4:74-9:168). Staff also reluctantly admitted that if ComEd is doing temporary repairs when it previously did not, then it "probably" cannot do that for free (Sant, Tr. 1739:20-22), but Staff refused and still refuses to concede that the higher average costs have anything to do with the changes.

Staff also argues that its nine year average is supported by data for the first seven months of 2001. (Staff BoE at 17). That argument is without merit, for the reasons indicated above, and also because extrapolating from seven months of data on this subject is speculative and meaningless. (Voltz Sur., ComEd Ex. 46.0, p. 19:401-10). Moreover, at most, that argument would only support a 1998-August 2001 average, which yields an additional downward adjustment of only $748,000 (corrected for inflation), not $10,505,000. (*E.g.*, ComEd BoE at 35-36). Staff also fails to note that if the methodology for calculating the adjustment were modified, as the possibility is raised by Staff, to levelize both fixed and variable costs, then the

result would reduce ComEd's proposed downward adjustment by $600,000 (corrected for inflation). (*Id.* at 36). ComEd's exceptions should be approved, and Staff's rejected.

(d) Other Issues

(i) Distribution Salaries and Wages

Page 72 of the Order rejects Staff's distribution salaries and wages adjustment, while stating that it "appreciates Staff's concerns regarding what it labels as a significant increase in distribution salaries and wages in the test year" and noting that this issue will be revisited in the further proceeding in this Docket. Staff takes exception and argues that its adjustment should be approved. (Staff BoE at 18-19). Staff's adjustment is entirely mistaken.[†]

To begin with, the evidence submitted by ComEd in support of the prudence and reasonableness of its jurisdictional operational expenses as a whole, and the evidence specifically refuting Staff's and other intervenors' various "levelization" (or "normalization") adjustments, is extensive, highly detailed, compelling, and in numerous respects uncontradicted. (*E.g.*, Voltz Dir., ComEd Ex. 5.0, pp. 16:332-18:376 (distribution operating expenses); DeCampli Dir., ComEd Ex. 6.0, pp. 1:14-17, 19:408-23:480 (distribution operating and A&G expenses); Voltz Reb., ComEd Ex. 24.0 CR, pp. 10:205-14:280 (distribution operating expenses); DeCampli Reb., ComEd Ex. 26.0 CR, pp. 5:142-6:154, 11:269-13:329 (same); Helwig Reb., ComEd Ex. 19.0, pp. 2:24-3:55, 3:61-5:100, 7:142-54, 8:171-11:245 (same); Hill Sup. Reb., ComEd Ex. 38.0 CR, pp. 1:18-2:31, 2:44-12:259 (distribution and other operating expenses); Voltz Sup. Reb., ComEd Ex. 39.0, pp. 1:15-9:184 (distribution operating expenses); DeCampli Sup. Reb., ComEd Ex.

[†] It should be noted that Staff proposed adjustment here overlaps other adjustments proposed or supported by Staff, GCI and the ARES Coalition. (Voltz Sup. Reb., ComEd Ex. 39.0, pp. 2:41-3:57).

40.0, pp. 1:8-2:45 (same); Voltz Sur., ComEd Ex. 46.0, pp. 3:54-4:80, 7:145-8:168, 9:184-16:348 (distribution and other operating expenses)).[†]

Staff now makes assertions about "a large unexplained and unsupported increase in salaries and wages", "an unexplained increase of approximately $26 million," and (curiously, given Staff's typical dismissiveness of such evidence) that ComEd has "failed to provide projections, budgets, or any other support for this increase as an ongoing level of expense", and other assertions to that effect. (Staff BoE at 18-19). Staff's assertions cannot be reconciled with the evidence in the record. The evidence shows quite plainly that when the data regarding distribution salaries and wages increases from 1998 to 2000 is corrected to account for inflation, refunctionalization of transmission costs under the FERC "seven factor" test, accounting changes in the FERC accounts in which incentive compensation is recorded, and the downward adjustments proposed by ComEd itself in its direct testimony, the nominal increases in distribution salaries and wages in those years disappear, and, in any event, that the amount of distribution salaries and wages included in ComEd's revenue requirement is prudent and reasonable, including in light of 2001 and 2000 distribution O&M expense data and budgets. (*E.g.*, Voltz Sup. Reb., ComEd Ex. 39.0, p. 2:27-40 (distribution S&W); Voltz Sur., ComEd Ex. 46.0, pp. 9:184-10:214 (same); Helwig Reb., ComEd Ex. 19.0, pp. 2:28-33, 3:45-55; 3:61-6:116, 11:234-240 (distribution O&M); DeCampli Reb., ComEd Ex. 26.0 CR, pp. 11:269-13:315 (same); Helwig Sur., ComEd Ex. 43.0, ComEd Exs. 43.1-43.2 (same); GC Cross Ex. 65 at A-2 (same)). For example, ComEd witness Philip Voltz testified in part as follows:

[†] Those citations do not include ComEd's evidence regarding tree management and variable storm damage expenses discussed above.

Q. Mr. Sant shows the total distribution salaries and wages expenses to be $111 million, $138 million, and $190 million for 1998, 1999, and 2000 respectively. (Staff Ex. 14.0, page 3, lines 63-65). Does the apparent increase Mr. Sant cites reflect a substantial increase in real spending?

A. No, for the most part it does not. In 2000, ComEd accounted for refunctionalization of transmission costs to distribution, and also accounted for annual incentives at a distribution level. Previously, these costs were not accounted for at this level. Further, an annual 3.5% inflation factor and ComEd's proposed downward adjustments need to be taken into account. Once these items have been factored in, the spending in 1998, 1999, and 2000 (shown in 2000 dollars) is $118 million, $139 million, and $131 million, respectively. This represents a $21 million increase from 1998-1999 and an $8 million decrease from 1999-2000. The net $13 million increase, from 1998 to 2000, in salaries and wages is a reflection of the substantial changes ComEd has made to its practices in order to maintain and improve reliability.

(Voltz Sup. Reb., ComEd Ex. 39.0, p. 2:27-40). In addition, Staff in its rebuttal proposed a revised downward adjustment to incentive compensation, which removed $24,561,000 from distribution salaries and wages, ComEd in its surrebuttal accepted that revised adjustment, and the Order approved that revised adjustment. (Order at 101-103, and App. A, Sch. 2, p. 2). Any notion that the level of distribution salaries and wages in ComEd's revised proposed jurisdictional revenue requirement is excessive or even high compared to recent years cannot withstand scrutiny in light of the evidence. Indeed, while ComEd in its Brief on Exceptions did not propose to alter the language of the Commission Analysis and Conclusion rejecting Staff's adjustment, ComEd notes that the first sentence of that language is unwarranted. Staff's exceptions should be rejected.

(ii) FERC Accounts 580, 590, 592, 594 and 903

Pages 76-77 of the Order correctly reject GCI's proposed downward adjustments based on assertions about variances in costs recorded in FERC Accounts 580, 590, 592-94, and 903. GCI takes exception, as does the ARES Coalition, although the latter does so through the confused means of addressing the subject in passing elsewhere and there mixing it with cursory

spurious arguments on the subject of Staff's "special projects" adjustment. (GCI BoE at 28-31; ARES BoE at 9; ARES Exc. Order at 106, 124-125). GCI's and the ARES Coalition's exceptions are erroneous.[†]

To begin with, as noted in Section II.B, *supra*, GCI's approach to the test year and the concepts of "levelization" and "normalization" are fundamentally flawed and mistaken. Also, as noted in Section II.D.3.c.ii.D.1, *supra*, the evidence submitted by ComEd in support of the prudence and reasonableness of its jurisdictional operational expenses as a whole, and the evidence specifically refuting Staff's and other intervenors' various "levelization" or "normalization" adjustments, is extensive, highly detailed, compelling, and in numerous respects uncontradicted. In addition, GCI's arguments here rest in part on questioning ComEd's operating expense functionalization analysis and its electronic general ledger, CBMS, and those arguments have been utterly refuted in Sections II.C.2, II.D.3.a,, and II.D.3.b, *supra*. Moreover, in any event, ComEd specifically and repeatedly has shown that GCI's "levelization" proposals here are logically and factually bankrupt, and, in any event, are incorrect. (*E.g.*, ComEd Init. Br. at 92-95; ComEd Reply Br. at 44, 48-50).

GCI's Brief on Exceptions goes on at some length in arguing for its witness David Effron's proposal to "levelize" costs in FERC Accounts 580, 590, 592, 593, 594, and 903, but GCI really has nothing new to say, other than to attempt to find ambiguities in the language of the Commission Analysis and Conclusion section of the Order. (GCI BoE at 28-31). GCI's arguments are erroneous, as has been shown time and again. GCI basically looked at individual FERC Accounts in ComEd's FERC Form 1, selected several where costs had gone up in comparison either to 1999 or one or more prior years, arbitrarily presumed that "levelization"

[†] It should be noted that Staff proposed adjustments here overlap other adjustments proposed or supported by Staff, GCI and the ARES Coalition. (Voltz Sup. Reb., ComEd Ex. 39.0, pp. 2:41-3:57).

therefore was warranted without regard for the reasons for the increases and whether they were nominal or real, and then chose to reject without valid reasons all explanations for why the increases were appropriate or were nominal but not real. The Order already contains, in its discussion of ComEd's responses, multiple ample grounds for rejecting GCI's proposed adjustment here (Order at 74-76; *see also, e.g., id*. at 27, 28-29), and the Order correctly finds, among other things, that the premises of GCI's proposed adjustment are not supported by or the evidence in the record (*id.* at 76-77). GCI's and the ARES Coalition's exceptions should be rejected.

(iv) Adjustments for Post-Test Year "Merger Savings"

The Order adopts Staff's position and approves downward adjustments in ComEd's jurisdictional revenue requirement in the amount of $8,096,000 to take into account the closing of certain bill payment centers and the termination of 154 employees. (Order at 83). Although the evidence does not support those adjustments, (*E.g.*, ComEd Init. Br. at. 71-73; ComEd Reply Br. at 51), in order to reduce the issues for decision, ComEd took no exception to them its brief on exceptions.

GCI and the ARES Coalition now contend that the Order did not go far enough. Although the test year already reflects all savings that occurred during that year, the ARES Coalition argues that ComEd should be required to quantify some larger amount of merger savings and adjust its test year expenses to reflect them. (ARES BoE at 46). GCI contends that the Order's downward adjustments are too conservative and that the Commission should deduct a $27,487,000 hypothetical savings amount proposed by Mr. Effron. (GCI BoE at 32-34).

GCI's and the ARES Coalition's proposals to reduce ComEd's revenue requirement further for alleged merger savings that are not reflected in the 2000 test year should be rejected.

ComEd's treatment of merger costs and savings was fair, reasonable and more favorable to customers than would otherwise be required under the law. Unlike the adjustments proposed by GCI and the ARES Coalition, ComEd's treatment of merger costs and merger savings is symmetrical. All incremental merger costs that were incurred in the test year were excluded from ComEd's proposed revenue requirement, and all "merger savings" that were experienced in the test year were reflected in the revenue requirement. (*E.g.*, ComEd Init. Br. at 71; Hill Dir., ComEd Ex.4.0 CR, Sch. C-2.5; Hill Sur., ComEd Ex. 45.0, p. 39:842-50).

Accordingly, the ARES Coalition's request seeking a deduction of some unspecified additional amount of alleged merger savings, not supported by the evidence, should be rejected. The proposed one-sided adjustment, reducing ComEd's revenue requirement for merger savings when ComEd already excluded $34,515,000 of merger costs from test year expenses, is not just and reasonable. (Hill Dir., ComEd Ex. 4.0 CR, pp. 21:432-36, 25:536-37, 26:546-59 and App. C, Schs. C-2, C-2.5, C-2.6.)

GCI's proposed $27,487,000 adjustment based on Mr. Effron's hypothetical calculations is equally asymmetrical and unsupported by the evidence. Mr. Effron's entire analysis is based on gross assumptions and speculation, not on hard data. (GCI BoE at 32-33). For example, Mr. Effron assumed that 10% of ComEd's delivery services employees would be eliminated, even though there is no evidence to support this conclusion about reductions in the delivery services workforce. Mr. Effron has not demonstrated that the proposed Exelon force reductions on which he relies will decrease ComEd's costs in providing jurisdictional delivery services. (Hill Reb., ComEd Ex. 23.0 CR, p. 27:597-98). Further, the proposed employee reductions reported by Exelon will occur long after the test year (Hill Reb., ComEd Ex. 23.0 CR, p. 27:592-58), and are not evidence that ComEd's costs to provide delivery services will change at all in the short term.

Significantly, even Staff witness Sant concluded that Mr. Effron's proposed adjustment is inappropriate. (Sant Reb., Staff Ex. 17.0 CR, pp. 31:616-32:623). Finally, Mr. Effron's proposed adjustment should be rejected because it does not meet the standards for a *pro forma* adjustment. (*E.g.*, ComEd Init. Br. at 71-73; ComEd Reply Br. at 51).

The Order's treatment of post-test year merger savings, to which ComEd has taken no exception despite the strong evidentiary basis for doing so, should be adopted by the Commission.

e. Other Proposed Adjustments to Expenses

(iii) Environmental Remediation Expenses

The Order correctly finds that "…environmental remediation expenses were properly included in operating expenses because they are corporate expenses that should not be bypassed by any retail customer." (Order at 86). This conclusion appropriately follows the Illinois Supreme Court's mandate in *Citizens Utility Bd. v. Illinois Commerce Commission,* 166 Ill.2d 111, at 124; 651 N.E.2d 1089 (1995) (holding that costs of doing business include necessary costs to comply with legally mandated environmental remediation). The Court explained that environmental expenses, like taxes, are legally mandated and they benefit ratepayers because paying such expenses allows the utility to stay in business, therefore, such expenses are recoverable from ratepayers. *Id.*, 166 Ill.2d 111, at 120-124, 651 N.E.2d. 1089 at 1094-97. As a nonbypassable charge, allocation or functionalization is not required. Staff agrees that ComEd's test year expense is appropriate. (Sant Reb., Staff Ex. 17.0 CR, pp. 43:881-83). Staff does not take exception to the analysis or conclusion in the Order.

The ARES Coalition and the GCI parties take exception to this conclusion and merely recite their prior arguments, with one exception described below. Through their prior arguments,

ARES and GCI would have the Commission disregard clear Supreme Court precedent and conclude that these environmental costs must be related to delivery services to be recoverable. (ARES BOE at 46-48); (GCI BoE at 34-35). Because these expenses, while not "distribution" expenses as such, must be paid in order for ComEd to continue providing service, they meet the definition of delivery services. 220 ILCS 5/16-102. The Administrative Law Judges should again reject this ARES and GCI argument.

The ARES Coalition also claims that these expenses should be recovered through Customer Transition Charges. This is incorrect because the expenses are properly included in delivery services rates, and may not be disallowed merely because CTC recoveries would make up part of the shortfall. The CTC is determined by a formula using cost based delivery services rates as one of the inputs. The ARES Coalition's request to reverse the process is inconsistent with the Act's requirements. Moreover, environmental expenses will be incurred well beyond the period that CTC charges will be recovered. ComEd is entitled to recover all of this expense and this would simply never occur through CTCs.

(iv) Advertising Costs

The Order correctly concludes: "Based upon our review of each of the advertisements at issue in this matter, we conclude that the various advertisements clearly comport with provisions of the Act, in particular, subsections (a), (c), (e), (g) and (i) of the Section 9-225." (Order at 88 referring to 220 ILCS 5/9-225). The evidence supporting this conclusion is overwhelming. (ComEd Init. Br. at 75-77; ComEd Reply Br. at 53-54).

Staff and the ARES Coalition simply reiterate their prior positions in their respective briefs on exceptions. (Staff BoE at 20-21; ARES BoE at 48). The ARES Coalition adds nothing of substance, simply agreeing with Staff's position. (ARES BoE at 48). Staff argues that, notwithstanding the very specific statutory provision cited in the Order that contemplates the

content of recoverable advertising expenses, the broad statutory provision that states that delivery service rates shall be cost based means that the content of every advertisement must somehow tie directly to delivery services.

This strained interpretation flies in the face of the most basic principles of statutory construction and is inconsistent with Staff's own arguments. Where a statute deals with the specific subject matter at issue, it controls over the provision that is more general in nature. Presumably, the very reason that Section 9-225 is in the Act is because the Legislature contemplated that it would be unreasonable to require the content of every advertisement to be directed to generation, transmission or delivery services to be properly included in rates. Staff's position is also internally inconsistent in that it claims that Section 9-225 does apply to exclude certain advertising based upon its content, but does not apply when it does not support its results-based analysis. (Staff BoE at 20-21).

(v) Bank Commitment Fees

Staff does not take exception to the Order's conclusion that "…ComEd met its burden of establishing that such fees are a necessary operating expense and that $902,000 is appropriately included in its revenue requirement." (Order at 89). The ARES Coalition takes exception to this conclusion only by citing to a prior argument by Staff. (ARES BoE at 48) Obviously, Staff does not continue to advocate that this expense is disallowable and the ARES Coalition's continued attempt to ride Staff's position lacks merit and should be rejected.

(vi) Legal Expenses

The Order also correctly concludes that ComEd "…sufficiently explained the methodology employed to attribute its legal services expenses to delivery services. The Company demonstrated it has determined its jurisdictional legal expenses correctly." (Order at 91). Staff claims that the Order fails to correctly consider the relationship between certain legal

expenses and delivery services and merely reiterates its prior arguments. (Staff BoE at 22). It asserts that it proved that not all of ComEd's legal expenses were related to delivery services. (*Id*.) The ARES Coalition again takes exception but contributes nothing to the analysis, simply citing to Staff's prior unpersuasive arguments. (ARES BoE at 48-49).

ComEd agrees that not all of its legal expenses are directly related to delivery services; which is the very reason why it utilized numerous cost-driven allocators to properly allocate this expense among the functions of the business. No party contested the methodology employed by ComEd and the Order correctly finds that such was appropriate. (Order at 91).

(vii) Charitable Contributions & Memberships

The Order appropriately finds that ComEd's charitable contributions and industry-related membership expenses are recoverable, finding that "…our review of the contributions at issue leads us to conclude that overall the various institutions or entities in question foster and encourage skills and curricula which are critical to ComEd and its customers." (Order at 92-93). Staff now argues that certain of these expenses should be disallowed because they "…are in conflict with the Company's stated policy and outside the Company's service territory." (Staff BoE at 23). The ARES Coalition also takes exception but for no reasons independent of those of Staff. (ARES BoE at 49).

First, contrary to Staff's statement, Com has no policy limiting its charitable contributions to charities connected to its distribution system. Moreover, ComEd's policies have nothing to do with whether these expenses are recoverable, nor does geography. Staff's legally unsupported and narrow view would discourage future contributions to deserving organizations that everyone agrees benefit ComEd's customers-solely because a given charity is located on the

wrong side of the street? This is not a meaningful distinction and the Commission should reject this distinction.

(viii) Special Projects

The only party to take exception to this section of the Order, aside from ComEd's point of clarification (ComEd BoE at 46-47), is the ARES Coalition. It raises only one new point – claiming that the Order "…mischaracterizes the ARES Coalition's argument on this issue, implying that the ARES Coalition objected to including any special projects in Edison's revenue requirements. (*See id.*) The ARES Coalition referred to only three (3) projects…." (ARES BoE at 50). This is curious because in its reply brief, the last sentence of its argument on this subject states: "The ARES Coalition respectfully requests that the Commission remove all expenses associated with "special projects" from the proposed revenue requirements." (ARES Reply Br. at 57) (emphasis added). Which brief are the Administrative Law Judges to believe?

The ARES' coalition's rehashed arguments are otherwise marked by further gross mischaracterization of the record. It now claims that three specific projects should not be included in the revenue requirement because such projects will not "recur." (ARES BoE at 50). Its "evidence" consists of a cite to the record where it posed questions to a witness with no responsibility for the projects at issue. When asked whether two of such projects will recur, the Summer 2000 Readiness Program and the Jefferson Substation Refurbishment Program, Mr. Hill (ComEd's Director of Revenue Requirements) stated the obvious - that these projects are not within his area of responsibility. (Hill, Tr. 3455:17-3455:17). Because the ARES did not ask ComEd witness Michael Born this question, this is evidence? The ARES' "evidence" that the other project, a Data Conversion project, will not recur or continue is nothing but its own statement unsupported by anything in the record. (ARES BoE at 50).

In properly concluding that ComEd's Special Projects expenses are recoverable, the Order correctly considers the issue of recurrences of expenses of this type: "Special projects are a recurring type of activity, even though particular projects change over time." (Order at 94). Apparently, the ARES want ComEd to spend money on the same projects year after year in order to recover such expenses. The Administrative Law Judges should again reject this illogical argument.

(x) Interest on Customer Deposits

There are two adjustments proposed for this expense. The first results in a reduction of this expense by $919,000 to reflect a calculation error. ComEd and Staff agreed upon this reduction and the Order concludes that such reduction is appropriate. (Order at 96). Staff proposed the second adjustment claiming that this expense should be increased to reflect the change in interest rate (effective in 2001) that applies to customer deposits. (Staff Reply Br. at 34-35). This would result in an increase in ComEd's revenue requirement, but ComEd opposes this adjustment because it is not legally appropriate.

The Order appropriately addresses this adjustment: "With regard to Staff's second proposal and our review we conclude that the interest on customer deposits is not the typical subject for pro forma adjustment due to the inherent fluctuation of the rate." (Order at 96). Staff takes exception to this conclusion citing the same argument that it made before, namely that this is a pro forma adjustment. (Staff BoE at 24) As ComEd witness Hill explained:

> "The distinction I make between this cost item and the Company's *pro forma* adjustments relates to the permanency of the cost change. In the examples Ms. Jones' cites as similar *pro forma* adjustments, each adjustment is a more permanent change – the Distribution Plant will be in service for many years to come, the salary increases will not likely be taken away and, discontinuance of a program, of course, means it will end. Rate case expenses, while somewhat recurring, only occur in certain years and, therefore, require unique recognition of this cost event. It is based upon this distinction that I oppose her particular adjustment that looks at only one cost item in the test year."

(Hill Sur., ComEd Ex. 45.0, pp. 21:455-22:463). Staff's proposed modification is not appropriate and should be rejected.

Curiously, the ARES Coalition takes exception to the Order, arguing that the Order should do what it already does. ARES argues that the Order should "…adopt Staff's proposed $919,000 reduction Edison's proposed revenue requirement." (ARES BoE at 51). This is the first proposed adjustment described above to which Staff and ComEd agreed. Obviously, no reply to this argument is necessary.

(xi) Uncollectibles Expense

ComEd included $16.3 million in its revenue requirement as its actual uncollectible expense for the test year. The Order appropriately rejected the arguments of Staff and the GCI parties who claimed that the actual expense should be disregarded (for no apparent reason) in favor of an estimate based upon a partial multiple year average. The Order rejects Staff's position as an "…artificial 'estimate.'" Such a proposal is contrary to the principles underlying the use of a historical test year. (Order at 98).

First, the arguments for the "estimated" rather than actual expense presuppose a very important fact -- that there is something extraordinary about the actual expense incurred by the Company which justifies a deviation. This should not be lost on the Administrative Law Judges. There is simply no evidence in the record to justify an adjustment. As ComEd witness Hill observed: "The data supporting [the uncollectible account expense] has been available for months. No witness has challenged the accuracy of that analysis." (Hill Sur., ComEd Ex. 45.0, p. 30:652-53).

Staff also claims that the Order is wrong because it is the Commission's standard practice to normalize this expense and its proposal here is similar to the method it proposed and the Commission accepted in ComEd's prior delivery services rate case (Docket No. 99-0117). (Staff

BoE at 25-26). Staff's characterization of the Commission's Order in ComEd's prior delivery services case is misleading at best.

In ComEd's prior delivery services rate case, Docket No. 99-0117, Staff did not, as here, even propose an "estimated" expense based upon averages over some period of years. Instead, Staff simply argued about the allocation of this expense among the business functions. *Commonwealth Edison Co.,* Docket No. 99-0117, (Order August 26, 1999 at pp. 23–24). Likewise, the Commission's Order does not mention, let alone embrace, a normalization methodology for this expense. (*Id.*) GCI makes a similarly unsupported argument that should again be rejected by the Commission. (GCI BoE at 36-37).

(xii) Taxes Other Than Income Taxes

Use Tax

The Order correctly concluded that Use Tax is a recoverable expense. (Order at 101). ComEd takes exception to the Order's conclusion that the Use Tax expense should be adjusted as proposed by GCI witness Effron. (ComEd BoE at 48-49). Staff takes exception to the Order and reiterates its prior arguments. (Staff BoE at 26-27). The Administrative Law Judges should again reject staff's position, because, as Staff has conceded, use tax is a legitimate business expense. (Jones Reb., Staff Ex. 16.0, 6: 116-119). For the additional reasons cited in ComEd's Brief on Exceptions, the full amount of this expense should be recoverable, not the limited amount proposed by GCI witness Effron. (ComEd BoE at 48-49).

In the event that the Administrative Law Judges accept GCI's proposed use tax adjustment, the appropriate reduction to the revenue requirement is $506,000, not $1,126,000, as set forth in the Order. (Order at 101) (Effron Reb., GC Ex. 5.0, GC Ex. 5.1, Sch. DJE-4R)(ComEd BoE at 48). GCI did not argue that ComEd failed to adequately allocate this expense among the business functions. It simply argued that ratepayers should not be

responsible for the interest portion of the expense and that the expense should be recovered over a period of 39 months. The Order accepted GCI's first argument, but rejected the second. (Order at 101). ComEd's test year use tax expense was $3,784,000, which included interest in the amount of $1,366,000. Utilizing ComEd's allocator (37.02%), to which no party objected, the amount recoverable is $895,000, which is $506,000 less than the use tax originally proposed by ComEd, $1,126,000. (Effron Reb., GC Ex. 5.0, GC Ex. 5.1, Sch. DJE-4R).

Real Estate Tax

ComEd conditionally agreed to the adjustment to this expense advocated by the GCI parties. (ComEd BoE at 48-49). While the original amount of this adjustment was $2,633,000, GCI's witness acknowledged that the correct adjustment is $1,854,000. (Effron Reb., GC Ex. 5.0, GC Ex. 5.1, Sch. DJE-4R). To the extent that the real estate tax adjustment remains in the Order, the amount of this adjustment should be changed from $2,633,000 to $1,854,000.

Undisputed Other Tax Adjustments

In its rebuttal case, ComEd reversed two downward tax adjustments in an aggregate amount of $4,967,000. (Hill Corr. Reb., ComEd Ex. 23.0, p. 25:536–26:562). No party objected to this reversal and the Order concluded that it was appropriate. (Order at 101). In addition, no party raises an exception to this conclusion in the Order. However, the Order refers to the above amount as a downward adjustment rather than the reversal of a downward adjustment. *Id.* Accordingly, the paragraph at issue should be modified as follows:

"The Commission finds reasonable ComEd's proposed <u>reversal</u> of downward adjustments to the revenue requirement in an aggregate amount of $4,967,000 that it had made in its direct case for Taxes Other than Income Taxes – relating, in particular, to the Illinois Electricity Distribution Tax – because further analysis and factual developments showed that one

of these downward adjustments (amounting to $1,192,000) was unwarranted due to an inadvertent error. The second adjustment (amounting to $3,775,000) follows from the logic of the GCI's proposed adjustment to real estate taxes. The Commission notes that no party contested the reversal of either adjustment. We find that these two reversals are reasonable and should be approved."

(xiii) Incentive Compensation

The Order correctly finds that $33.2 million of jurisdictional incentive compensation was "…tied to achievement of key performance objectives. We find that the achievement of these objectives during the year 2000 benefited ratepayers. ComEd's performance in each of the identified areas was better as a result of the payment of incentive compensation and ratepayers benefited from this improved performance." (Order at 103).

Only one party takes exception to this analysis and conclusion -- the ARES Coalition. (ARES BoE at 52). ARES raises nothing new in its Brief on Exceptions. In fact, its first argument is not even its own. It claims that the Administrative Law Judges should have adopted the GCI's proposal for a "five-year normalization" of this expense. The GCI parties themselves do not even raise an exception in their own brief – given that, as ComEd has demonstrated, it would increase, rather than decrease jurisdictional incentive compensation. (GCI BoE at 39). This alone should be enough to indicate the weakness of this argument. Undeterred, the ARES Coalition then goes on to simply restate its prior argument which the Administrative Law Judges properly rejected. (ARES BoE at 52).

E. Cost of Capital

Staff proposes that the Order be modified to explain the methodologies and inputs used by Ms. Freetly to derive her 11.72% estimate of ComEd's cost of equity. (Staff BoE at 28-29). ComEd has no objection to inclusion of the requested description. As ComEd has explained in

its prior briefs on this subject, in order to narrow the issues in this proceeding, ComEd has agreed to support Ms. Freetly's proposed 11.72% cost of equity. Although the evidence supports Mr. Thone's alternative analysis and ComEd does not concede the merit of the arguments made in opposition to Mr. Thone's approach, inclusion of a description of Ms. Freetly's analysis provides further explanation for the Commission's resolution of this issue.

ComEd opposes the ARES Coalition's position that the Order should make findings about whether the cost of equity "should include equity costs associated with ... POLR supply risk..." (ARES BoE at 9, 52-53). The Order correctly determines that the Commission should make no findings concerning the POLR risks because neither Ms. Freetly's nor Mr. Thone's cost of equity analyses included upward adjustments to reflect POLR risks. (Thone Sur., ComEd Ex. 51.0 p. 3:46-49; Juracek Sur., ComEd Ex. 41.0, p. 31:718-33; Freetly Reb., Staff Ex. 19.0 CR, p. 20:359-60). Given that there is no POLR risk issue before the Commission, the ARES Coalition is simply requesting an advisory opinion, which the Order properly declines to provide.

ComEd also opposes the ARES Coalition's request for a finding that ComEd's testimony in this case "directly contradict[s]" ComEd's testimony in proceedings concerning the transfer of ComEd's nuclear generating stations. (ARES BoE at 53). ComEd's testimony in this case is consistent with that in the Genco transfer case, (Docket Nos. 00-0369/00-0394), stressing that restructuring has removed "the risks associated with owning and operating generation." (Peltzman Dir., ComEd Ex. 9.0, p. 12:249-51). The ARES Coalition refers to testimony from the Genco transfer case indicating that the transfer '"will not adversely affect either the cost of debt or the cost of equity."' (GCI BoE at 18). ComEd has said nothing to the contrary in this case. Rather, ComEd carefully explained that restructuring removes some risks and adds others, and at

this early stage in the process it is difficult to state how the risk profiles compare. (Peltzman Dir., ComEd Ex 9.0, p. 12:249-54).

Finally, the ARES Coalition suggests that, if it were appropriate to consider POLR risks when determining cost of capital and if a higher cost of capital were being sought in this case on that basis, the Commission would have to deny the request because ComEd voluntarily transferred its generating assets and abolished its fuel clause. (ARES BoE at 52-53). No such issue is before the Commission because no higher POLR-risk-based cost of capital is being requested in this case. But if it were, the proposition that the ARES Coalition advances would have to be rejected. ComEd did not forfeit its right to a cost-based cost of capital when it exercised its statutory right to transfer its nuclear stations and to eliminate the fuel clause. The Order appropriately includes no findings or conclusions about this hypothetical subject on which the ARES Coalition requests a decision.

The ARES Coalition proposes to include a description of the Coalition's position with respect to POLR risks. (ARES Exc. Order at 139-141). If this language is included in the Order, ComEd suggests that the following language be added on page 108 of the Order at the end of the "ComEd Response" section immediately following the description of the ARES Position.

> Although the Commission should make no findings concerning POLR supply risk issues that are not presented in this case, even if such issues were presented, the position of the ARES Coalition concerning the scope of delivery services risks is contrary to Illinois law. The ARES Coalition fails to distinguish between the costs incurred to provide generation (or other non-delivery) services, which ComEd has excluded from its jurisdictional delivery services revenue requirement, and the cost that ComEd incurs to raise equity capital for its distribution business. Section 16-108(c) provides that ComEd is entitled to recover "the costs of providing delivery services" and to "cost based" charges. 220 ILCS 5/16-108(c). Section 16-102, 220 ILCS 5/16-102, confirms that all of the costs that are "necessary" in order to make delivery services available, which include the cost of capital, fall within the definition of delivery services for which full-cost recovery is required.

As decisions of the United States Supreme Court, the Illinois Courts, and the Commission demonstrate, the cost of equity depends upon expectations of investors, who will consider whatever risks affect the return on their investment. *Duquesne Light Co. v. Barasch*, 486 U.S. 299, 314 (1989) ("One of the elements always relevant to setting the rate under [Federal Power Commission v. Hope Natural Gas Co. , 320 U.S. 591 (1944)] is the return investors expect given the risk of the enterprise.") The risks as perceived by investors are critical because the Commission must set a rate that is adequate "to assure confidence in the financial soundness of the utility," "to maintain and support its credit," and "enable it to raise the money necessary for the proper discharge of its public duties." *Bluefield Waterworks Co. v. Public Service Commission*, 262 U.S. 679, 692-693 (1923).

The testimony of ComEd's witnesses addresses the risks that investors will consider. Some of those risks arise from restructuring of the industry, which raises the potential for customer switching back and forth between delivery and bundled service, and imposes financial consequences on ComEd. The Commission is entitled to consider testimony about the likelihood that such switching will occur and the effect that ComEd's role as provider of last resort will have on investors' perceptions of the risk of an investment in ComEd's distribution business. The evidence indicates that investors will require a greater rate of return because ComEd's delivery services business is subject to a variety of service obligations including acting as a provider of last resort. ComEd's witnesses testified that these obligations raise ComEd's cost of providing delivery services. (ComEd Exs. 8.0, 9.0 and 10.0) The witnesses did not testify, and ComEd made no arguments, about the cost of meeting these POLR obligations themselves, only on how having POLR obligations rest on ComEd increases ComEd's cost of providing delivery services. Moreover, ComEd made clear that ComEd does not seek recovery of any generation costs. The return ComEd seeks in this case will be earned only on ComEd's distribution rate base, not on a rate base that includes generation assets or any other investments necessary to meet ComEd's obligations as a provider of last resort.

The ARES Coalition's is incorrect that, in establishing the cost of equity capital, the Commission decides as a matter of law what factors investors may consider when investing and should do so by looking at a hypothetical distribution business that is shielded from risks that face real distribution businesses in Illinois. "What is a reasonable return is a question of fact" that must be decided by considering evidence of the factors that investors will actually consider because that is the rate that ComEd will have to pay to raise capital for its distribution business. *Public Utilities Commission v. Springfield*, 291 Ill. 209, 233 (1920).

Because the cost of equity capital is a question of fact, the Commission is entitled to consider testimony that real investors will be concerned about the real risks that the return they would otherwise earn from a distribution business will be affected by losses arising from arbitrage opportunities and customer switching

that the new restructured industry make possible. The existence of these risks and the effect that they will have upon investors are factual matters for the Commission to consider.

Contrary to the contention of the ARES Coalition, ComEd's testimony in this case is consistent with that in the Genco transfer case, (Docket Nos. 00-0369/00-0394), stressing that restructuring has removed "the risks associated with owning and operating generation." (Peltzman Dir., ComEd Ex. 9.0, p. 12:249-51). The ARES Coalition refers to testimony from the Genco transfer case indicating that the transfer '"will not adversely affect either the cost of debt or the cost of equity."' ComEd has said nothing to the contrary in this case. Rather, ComEd carefully explained that restructuring removes some risks and adds others, and at this early stage in the process it is difficult to state how the risk profiles compare. (Peltzman Dir., ComEd Ex 9.0, p. 12:249-54).

Moreover, the ARES Coalition is incorrect in suggesting that, if a higher cost of capital were being sought in this case on the basis of POLR risks, the Commission would have to deny the request because ComEd transferred its generating assets and abolished its fuel clause. No such issue is before the Commission because no higher POLR-risk-based cost of capital is being requested in this case. But if it were, the proposition that ARES Coalition advances would have to be rejected. ComEd did not forfeit its right to a cost-based cost of capital when it exercised its statutory right to eliminate the fuel clause.

F. Cost of Service and Rate Design

1. Cost of Service Study Issues

Midwest persuasively argues in its Brief on Exceptions that the Commission should base rates on a marginal cost of service study. (Midwest BoE at 3-6). ComEd agrees. The use of marginal cost based rates sends proper price signals, results in cost-based rates, and promotes efficient competition. (*See* ComEd Init. Br. at 103-07; ComEd Reply Br. at 63-66; ComEd BoE at 50-54 (each citing and summarizing the evidence)).

a. Marginal Cost Study

No party raised any exception related to the design or accuracy of ComEd's marginal cost study. Nor did the Order find that the methodology of ComEd's marginal cost of service study

was flawed in any way. (*See* Order at 117). Therefore, should the marginal cost study be accepted, this Section of the Commission's order should conform to ComEd's Exceptions.

b. Embedded Cost Study

The Order adopts ComEd's Embedded Cost of Service Study (ECOSS), as modified and corrected in ComEd's rebuttal and surrebuttal testimony. ComEd properly and correctly performed the ECOSS, revising the study in its rebuttal testimony to incorporate two improvements proposed, respectively, by Staff witness Luth and the GCI, and correcting the study in its surrebuttal testimony to eliminate an error in allocation relating to a street lighting customer class. (Heintz Dir., ComEd Ex. 14.0CR, pp. 5:79-27:500; ComEd Exs. 14.1, 14.2, 14.3; Heintz Reb., ComEd Ex. 33.0, pp. 1:15-15:348; ComEd Ex. 33.1; Heintz Sur., ComEd Ex. 57.0, pp. 3:55-4:68; ComEd Ex. 57.1). Only two parties, GCI and IIEC, continued to take any exception to any portion of the methodology of ComEd's ECOSS. The Order properly rejected GCI's arguments (Order at 121-22) and their exceptions should be overruled.

GCI says that the ECOSS should use a 4-CP allocator instead of the 1-CP and 1-NCP[‡] allocators used by ComEd, claiming that the 4-CP allocator "recognizes that ComEd bases its distribution plant investments on the repetition of peak loads…." (GCI BoE at 40-41). GCI's errs. The evidence shows that ComEd's engineers plan and construct the relevant portions of the distribution system on single peaks, coincident and non-coincident. Indeed, one cannot imagine GCI seriously supporting the notion that ComEd allow distribution facilities to reach new peak loads four times before they were considered in planning the system. Mr. Born, a senior planner

[‡] A "CP" refers to a Coincident Peak, *i.e.*, the highest facility load that occurs at the same time as the system-wide peak load. A 1-CP measurement thus refers to the single highest coincident peak that occurs during a year, while a 4-CP allocator refers to the average of the four highest monthly coincident peaks, and may be substantially lower than the 1-CP. An NCP, or non-coincident peak refers to the highest load on an element, regardless of the system load at the time it occurs.

for ComEd, testified clearly that using a 4-CP factor to allocate capacity additions to the distribution system is not realistic. (Born Reb., ComEd Ex. 37.0, p. 7:121-25; *see also* Heintz. Tr. 3008:4-14; Heintz Sur., ComEd Ex. 57.0, p 1:18-21). GCI witness Bodmer, who is not a system planner, has no independent basis to opine otherwise.

Moreover, the record is clear that "Using an average of the four highest monthly peaks to determine capacity requirements would result in substantial overloads of most system facilities and unsatisfactory system operating performance." (Born Reb., ComEd Ex. 37.0, p. 7:121-25). Although meritless, GCI's 4-CP argument is but one example of the unfair and inconsistent approach taken by several parties objecting to ComEd's proposed revenue requirement, who simultaneously accuse ComEd of imprudently wasting money on distribution improvements, while arguing strenuously for rates that are inconsistent with maintaining a reliable system. This tactic should not be tolerated.

IIEC attacks the ECOSS, claiming that there are large "unexplained" changes in the costs applicable especially to large customers and asserting that these changes were supposedly caused by significant departures from the study approved in Docket 99-0117. The evidence refutes these claims, explains the improvements that were made to the ECOSS, and demonstrates the results of ComEd's ECOSS to be correct, as the Order found.

First, although its basic structure and function has not changed, some improvements were made to ComEd's ECOSS in this proceeding, including effecting rulings by the Commission in prior dockets and adding a high voltage electric service station ("HVESS") subfunction, which increased the accuracy of cost assignment. (Heintz Dir., ComEd Ex. 14.0CR, pp. 6:97-9:159, 10:177-11:203; Heintz Reb., ComEd Ex. 33, pp. 11:256-13:300). Adding this subfunction allows the study to employ, to the maximum extent possible, the cost detail provided by the

Uniform System of Accounts, and, ultimately, to allocate as accurately as possible the functionalized costs to the various customer classes on the basis of cost causation. (Heintz Dir., ComEd Ex 14.0 CR pp. 10:177-11:196). By contrast, no witness ever claimed that creating this subfunction was inappropriate.

IIEC's suspicion about the ECOSS is unfounded and unsupportable. The ECOSS itself was submitted along with detailed testimony. (Heintz Dir., ComEd Ex. 14.0CR, pp. 5:79-27:500; ComEd Exs. 14.1, 14.2, 14.3; Heintz Reb., ComEd Ex. 33.0, pp. 1:15-15:348; ComEd Ex. 33.1; Heintz Sur., ComEd Ex. 57.0, pp. 3:55-4:68; ComEd Ex. 57.1). There were no mysterious or unknown alterations. Indeed, IIEC witness Mr. Alan Chalfant acknowledged that he identified only one difference between the ECOSS and the similar study in Docket 99-0117: the addition of the HVESS subfunction. (Tr. 2543:7-2544:16). Nor are there any mysterious, unknown calculations. IIEC's witnesses -- as well as those for other parties -- had a full opportunity to review the ECOSS. IIEC witness Chalfant acknowledged that he could identify no mathematical error whatsoever in ComEd's embedded cost study (Tr. 2546:9-11), and that its results followed from its methodology and its data inputs (Tr. 2547:9-15). He also recognized that cost of service studies are based on data as well as methodologies, and that the use of different (in this case, newer) data understandably affect their outcome. (Tr. 2541:13-42:21).

In this instance, in particular, the costs reflected in the high-voltage subfunctions were refunctionalized since the last case. This, too, is exactly as it should be. High-voltage distribution costs should be recognized as such, not buried in rates paid equally by all customers. And, it is equally appropriate that much of the costs of high-voltage distribution facilities be borne by large customers, since over 90% of the load served at 69 kV and above is in the Over 10,000 kW class. (Heintz Dir., ComEd Ex. 14.0CR, ComEd Ex. 14.1, Sch. 2b, lines 7-8). This

is hardly unfair to large customers. They bear a much lower proportionate share of other distribution facilities costs and, despite IIEC complaints, large high-voltage customers have low overall distribution facilities charges. (*See* Alongi-Kelly Sur., ComEd Ex. 50.0CR, Att. C (the >10 MW class DFC of $3.24 is lower than the DFCs for the 6-10 MW, 3-6 MW, 1-3 MW, 800-1000 kW , 400-800 kW, 100-400 kW, 25-100 kW, and 0-25 kW, and railroad classes)).

In sum, IIEC's claim that new data and methodological refinements should necessarily result in only tiny changes in the results of the embedded cost study has no basis whatsoever. The fact that the class-by-class changes in revenue requirement between the earlier study and the current one do not meet IIEC's arbitrary standard is an irrelevant as well as arbitrary "apples and oranges" comparison. (Heintz Reb., ComEd Ex. 33.0, p 12:278-82). The Order correctly identifies IIEC's argument as an unsupported, results-oriented complaint, and rejects it accordingly.

2. Interclass Revenue Allocation

The Order correctly concludes that the increased revenue requirement should be allocated to classes based on cost-causation principles, and in accordance with an approved cost-of-service study. (Order at 122). Only IIEC takes exception to this finding.[†]

IIEC's exceptions should be rejected. The ECOSS is not flawed and IIEC's claim to the contrary is no reason for the Commission to throw up its hands and abandon making rates based on actual costs of service. An "across the board" approach should be employed only where an accurate cost of service study does not exist. (*See* Chalfant, Tr. 2534:21-2535:6). In this proceeding, ComEd has presented not one but two properly performed cost of service studies.

[†] Although IIEC states that "other parties" recommend an "across-the-board" allocations, no other party mentions the issue in briefs on exceptions. Even TrizecHahn, who did argue this issue below, now has elected to "ride along" with the ARES Exception Order, which rejects the across the board approach.

The accuracy of the ECOSS was demonstrated in Section II.F.1.b, *supra*, and not even IIEC's witnesses make a case for abandoning actual costs of service entirely. No witness prepared or offered an alternative analysis or argued that the evidence supported some other embedded cost based allocation.

IIEC's argument that assigning the revenue requirement in accordance with the ECOSS will create drastic "customer impacts" is disingenuous. ComEd demonstrated that the vast majority of customer classes -- including the classes that IIEC focuses on -- will experience a CTC offset for the proposed change in the DST rate, and that this CTC offset will buffer the rate changes ComEd proposes. (Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 6:126-30; 7:143-46; 40:886-41:904, and Att. G; Juracek Sur., ComEd Ex. 41.0, pp. 4:79-81, 13:319-22, 23:538-24:559, ComEd Exs. 41.2-41.5. While it is certainly true, as IIEC notes, that the CTC will "not last forever" (IIEC BoE at 13), this is hardly an excuse to perpetuate pernicious cross subsidies, or to allocate unfairly a larger portion of the revenue requirement to classes not as responsible for the costs. The record shows that current cost-causation differs from that reflected in the rates set in Docket 99-0117. The Commission should allocate the current revenue requirement based on the best, most current cost data, not on an across-the-board adder to an allocation known to be dated. Moreover, far from using the CTC offset to "gloss over" an inappropriate rate change, as IIEC says, the CTC is an ideal buffer, that allows the Commission to make the appropriate rate changes -- both to pass on any increase in the revenue requirement and to implement improved rate designs that reduce subsidies and increase efficiency -- with the least customer impact possible.

Finally, IIEC's complaints (IIEC BoE at 13-14) about large percentage changes in certain charges -- both up and down -- are particularly inappropriate and irrelevant here. Aside from

calculation flaws in IIEC's percentages[†], the groups seeing the largest percentage increase in DST charges (before CTC offset) are the low voltage, high demand customers who have in the past been so heavily subsidized by high-voltage customers of the same or similar size. The percentage change in the charges to these customers is largely a function of the decision to correctly recognize the real difference between high- and low-voltage customer costs, not of the decision to allocate the revenue requirement to classes based upon class costs-of-service. There is no valid ratemaking objection to eliminating these subsidies (*E.g.*, Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 20:454-22:501, 24:534-25:559, 26:590-27:611, 28:628-35; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 2:28-3:64; Swan Reb., DOE Ex. 2.0 CR, pp. 22:508-31:724). Indeed, IIEC supported ComEd's HVDS rate design as updated in ComEd's surrebuttal testimony to reflect the closure of ComEd's largest high-voltage customer. (Alongi-Kelly Sur., ComEd Ex. 50.0 CR, pp. 9:174-10:193 and Att. B; Chalfant Reb., IIEC Ex. 4.0CR, p. 13:1-10; Chalfant, Tr. 2535:19-2536:6.) IIEC cannot have it both ways.

Finally, IIEC argues that non-residential customers should be allocated a lower share of the revenue requirement because they are more likely to leave ComEd supply for a RES. (IIEC BoE at 14). This argument is utterly without support in the record. There is no evidence that the differential change in rates between those proposed by ComEd and those that would result from an across-the-board allocation will have any impact on non-residential switching, even without consideration of CTC offsets. But, even if there were, IIEC cannot justify shifting additional costs to residential customers solely to subsidize their own customers' switching. The Act

[†] *E.g.*, the percentages cited by IIEC are based on a revenue requirement that is substantially higher than ComEd now seeks, let alone than was recommended in the Order, and reflect HVDS credits that were significantly revised, as noted below.

requires rates to be cost-based. 220 ILCS 5/16-108. IIEC has not justified deviating from this mandate.

G. Rate Design

Several parties argue that various rate design issues are now ripe for decision, in addition to those which the Joint Movants agreed, and the ALJs found, were required to be decided in order to approve residential delivery services rates. ComEd agrees that the outcome of these additional rate design issues is unlikely to be affected by the audit, and that the record is more than adequate to decide them. Indeed, as explained below, and in the relevant section of ComEd's post-hearing Initial and Reply Briefs, the record overwhelmingly supports ComEd's rate designs, and provides more than an adequate basis for approval of ComEd's proposals. However, ComEd does not believe that it would be procedurally appropriate or wise for the Commission to decide all rate design issues without a Proposed Order, and also disagrees that there is likely to be any question of staleness on these issues under the circumstances governing the audit. The Commission should, as its Rules of Practice provide, have the benefit of the ALJs' view of the evidence, and the benefit of proper exceptions and replies, when deciding these issues.

ComEd also finds it odd that a party, such as the ARES Coalition, who argued strenuously that the dollar amount of ComEd's charges was of paramount importance, would now argue for disposition of important rate design issues before the non-residential revenue requirement is finally determined. This is especially odd given the ARES' assent to and support of the Joint List of Issues which excluded these issues from the list that had to be decided in order to establish residential rates. (*See* Joint Movants' and Others' Schedule of Issues Required to be Decided in the Interim Order (Jan. 28, 2002)). Even more odd is the ARES Coalition's claim that failure to address all rate design issues now, before the charges or revenues

attributable to non-residential customers have been finally determined, would be anti-competitive. It is the ARES Coalition that insists that the whole question of "customer impacts" revolves around how much the customer pays under each rate design, and those calculations cannot be made without a revenue requirement. Deciding these issues on an interim basis now will not reduce "uncertainty." (ARES Exc. Order at 156). No one -- ComEd, customer, or ARES -- will know what the charges will be anyway, although ComEd expects that a properly conducted audit will confirm the prudence and reasonableness of its costs. Rather, this request -- made now after the ALJs' request to limit the issues -- appears to set up a situtation where parties can have two opportunities to litgate rate design issues, once now and again, after the audit is complete and charges are known. (*See* Comments of ALJ Casey, Tr. 3718-19). This promotes neither certainty nor fairness.

On the other hand, ComEd understands Midwest's desire for rates that properly reflect costs and eliminate needless cross-subsidies. ComEd shares that goal. But, since the rate proposals advocated by Midwest are necessarily revenue neutral -- that is, they reduce the rates for IPPs and extremely high-voltage load customers only by transferring costs that were assigned to those customers to other customers who had been the beneficiaries of a subsidy -- they cannot be implemented without changing the rates for all customers, and increasing the rates for some. It is ComEd's understanding that the Commission does not wish to make significant changes in the level of non-residential delivery services rates prior to the conclusion of the audit and the follow-on phase of this proceeding. However, should the Commission decide otherwise, ComEd emphasizes that rate design proposals for IPPs based on the assumption that such customers' distribution facility charges should be specially addressed can only be fairly implemented on a

revenue neutral basis. Midwest appears to acknowledge and agree with this caveat. (*See* Midwest BoE at 3 n.1).

This Section II.G of ComEd's Reply Brief on Exceptions will follow the organizational structure of the Order and will thereafter address the merits of arguments made with respect to other rate design issues that were raised by other parties but that need not be decided in the Interim Order.

1. Rider ISS

ComEd voluntarily proposes to offer Interim Supply Service, a "safety net" that allows delivery services customers who, for reasons beyond their control, lose their competitive source of supply to continue to receive electric power on an unbundled basis for a short time while they choose a new supplier, under Rider ISS. (Clair-Crumrine Dir., ComEd Ex. 12.0CR, pp. 24:547-64, 25:570-77; Clair-Crumrine Reb., ComEd Ex. 31.0CR, p. 10:223-26). The Order approves Rider ISS, which the record demonstrates is both just and reasonable and will promote efficient competition. Staff takes no exception to the approval of Rider ISS. Nor does Midwest, DoE, Peoples, or the MEA. The exceptions taken by GCI, the ARES Coalition, and IIEC -- which are mutually inconsistent -- are groundless and should be overruled.[†]

a. Pricing

GCI nonetheless argues that Rider ISS should provide customers with more "price certainty," arguing that it would be just and reasonable to do so. GCI errs. ComEd proposes to offer interim supply service at a seasonal market-based price because such a price is appropriate to the Rider's purpose: providing unbundled supply without warning for the short period of time required for the customer to arrange for another, permanent supplier, all without increasing the

[†] The briefs filed by BOMA, Nicor, TrizecHahn, or NEMA raise no issue whatsoever concerning Rider ISS, although they "sign on" to parts of the ARES Exception Order.

utility's cost of service or becoming an "attractively priced bogey that can undercut legitimate competitors during periods of high market prices." (Clair-Crumrine Dir., ComEd Ex. 12.0CR, pp. 24:567 - 25:569). The record shows that Rider ISS offers customers a beneficial, cost-based safety net that they can leave, at any time, if any other alternative, including bundled rates, become more attractive. (Clair-Crumrine Dir., ComEd Ex. 12.0CR, pp. 24:555-64, 25:570-77). At the same time, Rider ISS's market-based pricing structure both helps protect ComEd and protects the competitive market by setting prices that discourage "gaming" of the system to the detriment of RESs. (Clair-Crumrine Dir., ComEd Ex. 12.0CR, pp. 26: 601-04; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 8:177-9:190). There is no evidence that price or the variability of Rider ISS is unjust or unreasonable -- and GCI cites to none. And, there is nothing unjust about a market-based price that reflects the cost of providing this inherently volatile, short-term service. (Clair-Crumrine Dir., ComEd Ex. 12.0CR, pp. 26: 587-92). As the Order notes, the Commission "in Docket 99-0117 … agreed with parties who suggested that Rider ISS should be provided to customers at market based rates. We see no reason to deviate from this position at the current time." (Order at 125). Indeed, ComEd's use of the seasonal PPO rate provides customers some price cushion while still tying the rate to actual market prices. (Clair-Crumrine Dir., ComEd Ex. 12.0CR, pp. 26: 593-598).

GCI's argument that customers might prefer a still lower rate or a pre-set rate detached from the market is irrelevant. GCI's argument is especially specious given that no customer is forced to take Rider ISS for long, even if the customer's RES fails with no warning whatsoever. The customer can transfer to another RES or back to ComEd's s bundled rates at any time. (Alongi-Kelly Dir., ComEd Ex. 13.0 CR, 1st Rev. Sheet No. 159 (Rider ISS Sheet 159)). It is also noteworthy that GCI cites only Staff testimony regarding the volatility of Rider ISS prices,

although it appears that the referenced testimony misunderstood ComEd's proposal (Clair-Crumrine Reb., ComEd Ex. 31.0CR, p. 8:173-76; Clair-Crumrine Sur., ComEd Ex. 49.0CR, p. 13:279-87) and despite the fact that Staff raises no exception to the Order's approval of Rider ISS. (GCI BoE at 44). Likewise, GCI's claim that ComEd witness Strobel supports certainty in prices refers to testimony addressing delivery rates, not rates for short-term supply whose costs are tied to the spot market. (Strobel, Tr. 681-84).

Indeed, it is GCI's proposal that is unjust and unreasonable. Utilities, by definition, cannot anticipate Rider ISS load -- customers can fall onto this service at any time, unilaterally, and without notice or warning. If the ISS price were set at a rate not based on market values -- such as the bundled rate advocated by GCI -- the utility is left exposed to uncompensated risk not only when a surprisingly large (or small) number of customers return, but to systematic exploitation by customers (or suppliers and agents) who arrange for the termination of supply to occur during those periods when the "stable" and "certain" ISS price just happens to be below cost. This is not the purpose of Rider ISS. It is not -- and should not be -- a means to game to the unfair detriment of utilities and legitimate competitive suppliers alike. (Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 26:601-04).

Recognizing the need for market-based Interim Supply Service prices, IIEC on the other hand suggests going beyond even seasonal prices, and instead pricing Interim Supply Service based upon the hourly rates calculated for ComEd's Rate HEP. While GCI argues that Rider ISS prices are too volatile, IIEC argues they are too stable and should be replaced with a price that can change *hourly*. The record shows, however, that IIEC's proposal cannot be practically implemented. (Clair-Crumrine Reb., ComEd Ex. 31.0CR, pp. 6:131-34, 7:153-62).[†] This is

[†] IIEC refers to a ruling made in the *Illinois Power* delivery services rate docket, No. 01-0432, to which ComEd is not a party, as if the decision in that case can control the Commission's decision here. IIEC's

especially true for residential customers, who lack hourly meters. In any event, nothing in IIEC's argument shows that ComEd's proposal is unjust or unreasonable.

The ARES Coalition offers an even more puzzling exception. It begins by falsely attacking the 10% adder to the annual PPO price as a penalty, only to end by proposing an adder of its own. In fact, the 10% adder is not a penalty. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 9:191-94, 10:213-19). The record shows that the adder appropriately compensates ComEd -- "albeit incompletely" -- for the uncertainty as to the quantity of capacity ComEd has to procure to meet load that can be involuntarily imposed on ComEd at any time, and that the adder serves the additional pro-competitive function of discouraging the damaging gaming that has occurred in the past with "safety net" rates such as this. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 8:177 - 9:190; Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 24:565-25:569, 25:584 - 26:592, & 26:599-604).[†] The ARES Coalition cites to no contrary evidence. Indeed, almost all witnesses agreed that an adder was appropriate. (Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 15:338-44). And they cannot reconcile this claim with their own advocacy of an adder. Moreover, the record shows that the ARES Coalition's adder proposal is decidedly inferior -- undermining proper customer incentives and exposing utilities to unrecovered costs, in addition to being impractical

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argument is improper and prejudicial, and invites the Commission to act both unfairly and unlawfully. The proposed rates are quite different. And the evidentiary records are completely different. The fact that, in IIEC's view, IP failed to justify its rate is no more a reason to reject ComEd's rate than is ComEd's success a reason to validate IP's rate. The Commission must decide this case on the record in this case, as applied to the tariffs proposed in this case.

[†] This fact also demonstrates the perverseness of the ARES' suggestion that ComEd should have to deduct funds it has collected for Rider ISS from its revenue requirement, as if it were somehow a windfall. (ARES BoE at 68; ARES Exc. Order at 167). This suggestion, newly born in the ARES BoE and Exceptions Order, is unsupported by any evidence, demonstrably unjust, and would deny ComEd any opportunity to recover the costs of providing this service.

to bill. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 9:196-209; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 14:308- 15:327).[†]

For all of the above reasons Rider ISS should be approved, as the Order finds, and the exceptions to its terms overruled.

b. Commission Authority to Alter ComEd's Proposal

Because the Order concludes that Rider ISS should be approved as proposed, it finds moot the question of the limits on the Commission's authority to modify Rider ISS. (Order at 126). This ruling is manifestly correct. If -- as it does -- the record shows that ComEd's rate is just and reasonable, the question of its approval is at an end.

GCI, however, relying on their flawed attacks on Rider ISS's terms, argues that the Commission can order ComEd to provide Interim Supply Service on different terms, based on the claim that there are no "unregulated tariffed services" and that the Commission has authority to determine whether proposed Rider ISS is just and reasonable. (GCI BoE at 49-50). This is a red herring. ComEd does not argue that the Commission lacks authority to determine if Rider ISS is just and reasonable, or that it lacks authority to determine whether ComEd's proposal should be placed into effect as a tariff. Assuming, *arguendo*, that there were any factual basis to do so, the Commission could reject Rider ISS. However, the Commission may not order ComEd to offer interim supply service to residential customers. As noted above, interim supply service ISS is not a delivery service and is not a service that utilities must offer under the Act. The General Assembly specifically barred the Commission from requiring "an electric utility to offer

[†] Instead, the ARES Coalition's brief insinuates that because ComEd did not publicly announce to the ARES Coalition which of their competitors ComEd believes improperly abused Rider ISS in the past, ComEd's testimony is somehow in doubt. This is both illogical and scurrilous. The ARES Coalition's separate claim that ComEd refused to provide data to the Commission is simply false. (ARES BoE at 67).

any tariffed service other than the services required by this Section…," which do not include Interim Supply Service. 220 ILCS 5/16-103(e).

The ARES Coalition makes a similar argument, but couples it with a bald misstatement of fact. ComEd has not, as they claim, filed tariff sheets extending Rider ISS to residential customers. Had ComEd done so, the Commission would have had to suspend them, which it clearly has not. Rather, ComEd filed with the Commission (at the request of Staff) a Petition proposing that the Commission approve attached tariff sheets for timely filing. In any event, the ARES Coalition cannot read out of existence the specific limitation of Section 16-103(e) on the authority of the Commission to order a utility to offer new services simply by arguing that the Commission can find that the utility's rates are not just or reasonable unless that service is offered on terms determined by the Commission. Section 16-103(e) is a limitation on Article IX, not visa versa.

Although it is not discussed in any Brief on Exceptions, the ARES Exceptions Order (at 168-69) also argues that since ComEd offers Interim Supply Service to non-residential customers pursuant to an earlier voluntary offer, the Commission can simply "change" that tariff and thereby force ComEd to extend Interim Supply Service to other customers on other terms. This argument is both legally disingenuous and irresponsible as a matter of policy. Legally, it is clear that ComEd has many tariffs on file, extending many services to residential and non-residential customers alike. If the Act simply permitted "revision" of existing tariffs -- even ones that the Commission could not under Section 16-103(e) order a utility to file -- to include new services or to extend existing services to new types of customers under circumstances where Section 16-103(e) would prohibit the Commission from ordering the utility to file a new tariff, then Section 16-103(e) has no meaning at all. Indeed, under that view of the world, it would matter little that

ComEd previously agreed to offer interim supply service to non-residential customers, the Commission could simply "modify" Rate RCDS to include whatever new or additional services a party wished, and Section 16-103(e) would be rendered utterly irrelevant. Moreover, Section 16-103(e) itself imposes no lesser restraint on the Commission's authority to order utilities to offer new services through revision of existing tariffs than through new tariffs. It provides simply that "The Commission shall not require an electric utility to offer any tariffed service other than the services required by this Section, and shall not require an electric utility to offer any competitive service." Finally, adopting the ARES' argument would also be bad policy. If the Commission determines that any time a utility voluntarily offers an additional tariffed service -- especially one as beneficial as Interim Supply Service -- it thereby opens the door to it being required to offer additional services, or the same service on different terms, than the Commission will squelch utilities' willingness to offer such services. Everyone, customers and utilities alike, will loose.

IIEC, unlike the ARES, appears to recognize the limitations the Act placed on the Commission's authority to order a utility to provide Interim Supply Service, and recognizing that, urges the Commission to make clear that it is not modifying Rider ISS, but simply rejecting it outright. (IIEC BoE at 19). While IIEC correctly address the Commission's jurisdiction, for the reasons noted above, IIEC's conclusion that Rider ISS should be rejected is without basis or merit. Rider ISS is just and reasonable, and it serves neither customers nor the market to prevent ComEd from offering this service on the terms proposed.

In short, Rider ISS is a voluntary service, which ComEd has not agreed to offer on any terms other than those proposed. While the Commission has jurisdiction to reject ComEd's

offer, it cannot order ComEd to extend the offer on different terms. Since Rider ISS has been shown to be just and reasonable, the Order correctly disposes of this issue as moot.

5. Rider TS – Transmission Service

Only IIEC raises any objection to the Order's approval of the two principal functions of Rider TS: passing through to Rider PPO and ISS customers the RTO transmission services costs paid by ComEd on their behalf, and crediting unbundled retail customers' CTCs with the costs of transmission services and ancillary transmission services imposed under the RTO tariff. IIEC argues that Rider TS should establish different transmission charges for different classes of customers. (IIEC BoE at 19-20).

IIEC's suggestion should be rejected. Rider TS properly passes through transmission charges to Rider PPO and Rider ISS customers through the use of a single charge that reflects the actual costs those customers cause ComEd to incur, in the same manner that they are incurred, on a per kWh basis. (Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 19:428-34). This is the correct rate design. Regional transmission operators' OATTs do not -- and could not -- price transmission and ancillary transmission services at different unit costs to members of the myriad different retail rate classes maintained by each local utility in several different states. (Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 19:425-34). Because ComEd's costs under the RTO transmission tariff will not vary depending upon the Rate RCDS class of the customer, and because the customers will thus impose like unit costs on ComEd, Rate RCDS uses a corresponding equal and level unit charge for all such customers. Proposed Rider TS Sheets 218, 221. Setting different rates for different class will only unfairly favor large customers' classes likely to contain IIEC members, it is a naked and unjustified request for a subsidy at the expense of other customers who impose the same unit transmission costs. (Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 13:308-19-430).

Finally, IIEC's claim that ComEd's calculation of CTC credits for transmission costs is inconsistent with the uniform transmission charge is incorrect and should be rejected. Because CTCs apply to all Rate RCDS customers (of course, some CTCs may calculate to zero), "the equation in Rider TS – Transmission Service results in a single system average per kWh value that is used for all customers and customer classes," to properly reflect the system-wide average costs of these transmission services. (Clair-Crumrine Sur., ComEd Ex. 49.0CR, p. 19:428-30). On the other hand, as noted above, the charges applied to Rider PPO and Rider ISS customers reflect instead the actual costs those customers cause ComEd to incur. This is exactly as it should be. As Ms. Clair and Mr. Crumrine testified:

> Customers that take service under Rider PPO or Rider ISS will be charged by ComEd based on the actual costs that ComEd incurs to procure transmission services on their behalf. Under Rider TS, ComEd will apportion those costs to all customers on Rider PPO and Rider ISS based on an average cost per kWh. Thus, Mr. Stephens' concerns are unfounded. There is no mismatch in the methodology.

(Clair-Crumrine Sur., ComEd Ex. 49.0CR, p. 19:430-34). IIEC's exceptions should be denied.

6. 24-Month Return to Bundled Service Requirements

The Order, at page 138, correctly finds that:

> Section 16-103(d) of the Act, provides that, for residential and small commercial customers, utilities "shall be entitled to impose the condition that such customers may not elect delivery services for up to 24 months thereafter." We agree that a 24-month minimum duration of service for return to bundled service is consistent with the Act and may be imposed by the Company. The Commission declines Nicor's and Staff's suggestions to reduce this period because a reduction is neither required by the Act nor permitted to be imposed without ComEd's consent. We also reject as unnecessary Staff's proposed amendment to ComEd's tariff language.

GCI argues that ComEd's right to impose the 24-month period can only be exercised if the Commission independently finds that the requirement is just and reasonable. (GCI BoE at 52-53). GCI's argument is utterly baseless, for three reasons.

- It is inconsistent with the plain language of Section 16-103(d). 220 ILCS 5/16-103(d). Section 16-103(d) expressly provides that the utility "shall be entitled to impose" a 24-month waiting period on customers who choose to return to bundled service. The Act does not condition this right on a finding by the Commission that it's the period is just and reasonable. It grants the option to the utility. The General Assembly already made the legislative determination that this limitation is just and reasonable when it vested the utility with that authority.

- Were GCI's reading of the Act correct, Section 16-103(d) would be pure surplus. The 24-month period would become a tariff term, just like any other, that could only be approved upon proof that it was just and reasonable. The purpose of Section 16-103(d) is to remove this particular term from that inquiry.

- Even assuming *arguendo*, that GCI's argument were correct, ComEd demonstrated that the condition was just and reasonable. The record shows that the 24-month period is a legitimate means of helping to mitigate (albeit, only incompletely) uncompensated supply risk that customers can impose by switching back and forth. (Juracek Reb., ComEd Ex. 20.0, p. 41:969-42:979). Bundled rates are designed to reflect a utility's costs over a longer term, and it is manifestly unjust and unreasonable to permit residential customers to flip between bundled and unbundled rates so as to deny the utility cost recovery.

In contrast to GCI, NEMA and Nicor each recognize, in the text of their argument and/or their proposed language, that ComEd is entitled by the Act to require residential customers who return to bundled service to stay on bundled service for a period of 24 months. However, they claim that the Commission should encourage ComEd to waive this right, parroting GCI's claim the requirement is "onerous" and "anti-competitive." (*E.g.*, NEMA BoE at 4-5; Nicor Energy BoE at 3-4). In fact, as noted above, the record shows that the 24-month period is not onerous or a penalty, but a means of reducing the ability of customers to game tariffs set to recover costs only over the long term. (Juracek Reb., ComEd Ex. 20.0, p. 41:969-42:979). There is simply no evidence to support Nicor's claim that 12 months is sufficient to prevent the ability to "game the system" that Nicor acknowledges. (Nicor Energy BoE at 3). Indeed, although GCI, NEMA, and Nicor all cite to Staff witness Schlaf, Staff takes no exception to the Order on this issue. Moreover, Dr. Schlaf, who testified on this question on direct, (Schlaf Dir., Staff Ex. 10.0, p. 16:391-98), offered no response to Ms. Juracek's subsequent explanation of why the 24-month

requirement was not punitive or anti-competitive. Indeed, the notion that it would be anti-competitive to impose a restriction only on those customers that have already chosen to abandon the competitive market is unsupported and illogical. For these reasons, the record does not support any language calculated to discourage ComEd from implementing tariff provisions that the General Assembly has for good reason specifically authorized. GCI's, NEMA's, and Nicor's exceptions should be rejected.

7. RCDS Rate Design

a. Demand Ratchet

(i) General Service Ratchet

ComEd has proposed a twelve month "demand ratchet" for non-residential delivery services customers (if demand-metered).[†] Though ComEd's proposed annual demand ratchet does not affect residential customers, the ARES Coalition asserts that the Commission should resolve the issue at this time, and submits a variety of criticisms of ComEd's proposal. (ARES BoE at 55-57; ARES Exc. Order at 157-158). Though BOMA did not submit a substantive Brief on Exceptions, it, like the ARES, claims that ComEd's proposed demand ratchet should be rejected based upon lack of comparability with ComEd's bundled rates. (ARES Exc. Order at 157-158).

The overwhelming evidence in the record demonstrates that ComEd's proposed annual demand ratchet provides numerous benefits. The proposed demand ratchet, while being revenue-neutral to ComEd, improves the allocation of costs in accordance with cost causation, reduces intra-class cross subsidies flowing from high load factor customers (in brief, customers with more level demands) to lower load factor customers (in brief, customers with "peakier"

[†] Approximately 99% of non-residential load is demand-metered. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 12:267-68).

demands), sends economically correct price signals, and encourages economic demand-side management (and other "peak-shaving" tools) and distributed generation, which promotes market stability and supply reliability. (*E.g.*, Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 9:211-18, 13:308-19:430; Gordon Dir., ComEd Ex. 2.0, pp. 15:404-17:458). The ARES Coalition's assertion that system benefits or efficiencies do not outweigh purported disadvantages of the demand ratchet, and that the demand ratchet would negatively affect reliability, is contradicted by the record.

The ARES Coalition's suggestion that a ratchet should only be permitted if ComEd can determine the precise amount in additional delivery system costs that are associated with a particular customer, is ludicrous. The cost of a customer's distribution facilities is determined by the facilities installed, which is in turn determined by the load that customer has historically demonstrated. (Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 14:323-19:430; *see also* ComEd Init. Br. at 109-10; DOE Init. Br. at 10-11). Although not every new customer peak requires new facilities, every new annual customer peak does mean that a greater share of the existing local distribution equipment was, in fact, needed to serve that customer. There is no just reason that the "high peak" customer should be subsidized by other customers who have not set new, higher peaks. (Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 18:413-19:427; Swan Dir., DOE Ex. 1.0 CR, at 19:391-93). Moreover, while it is true that annual demand does not correlate *perfectly* with distribution facilities costs -- local or regional peaks can also contribute -- the effect of customer peaks predominates. (Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 15:330-45). Of the practical billing determinants available, the annual demand proposed by ComEd best reflects the actual cost of the delivery facilities installed. (Clair-Crumrine Dir., ComEd Ex. 12.0 CR, p. 15:330-345).

The ARES Coalition's and BOMA's assertion that there should not be an annual ratchet for delivery services customers because there is none in bundled rates is illogical. Bundled rates are designed to recover different costs (especially generation costs), having different drivers, than delivery rates. (*E.g.*, Haynes, Tr. 1033:17-1034:3). The annual demand ratchet is the correct driver for delivery costs and will minimize cross subsidies for delivery customers. "Delaying action to address these cross subsidies [until bundled rates can be changed] is unfair to those customers who are paying them." (Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 6:126-27). Further, the ARES Coalition's feigned concern for continuity between delivery services offerings and bundled service is belied by NewEnergy's recent position in the uniformity proceeding, in which it stated, "Delivery services are not like bundled services. They are uniquely different and the reasons therefore are obvious." (Docket 00-0494, NewEnergy/IIEC Reply Brief, January 26, 2001, p. 26). Indeed, they are.

The ARES Coalition repeatedly claims that ComEd has not overcome objections to a demand ratchet in the 1999 ComEd rate case. However, Commission decisions are neither legal precedents nor *res judicata*. 220 ILCS 5/10-103, (*e.g., United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 22-23, 643 N.E.2d 719, 729 (1994); *Mississippi River Fuel Corp. v. Illinois Commerce Comm'n*, 1 Ill. 2d 509, 513, 116 N.E.2d 394, 396-97 (1953). The Commission must make its decisions based strictly upon the evidence presented in the record in the current proceeding. *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 201, 227, 555 N.E.2d 693, 697, 709 (1989). While the Commission declined to adopt a demand ratchet in Docket No. 99-0117, the more extensive supporting evidence in the record in this proceeding warrants a different result. In any event, ComEd has certainly demonstrated that, regardless of how the Commission resolves the issue of

a demand ratchet in general, unless an annual ratchet is approved for generation customers, there will be essentially no recovery from such customers for many distribution facilities and their costs will be unreasonably shifted to other customers. (Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 13:308-19:430). Refusing to approve a demand ratchet in this special case would not only plainly depart from principles of cost-causation, it would be patently unjust and unreasonable to the customers who will subsidize the costs imposed by generators. (Gordon Dir., ComEd Ex. 2.0, pp. 16:429-17:458; Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 15:330-19:430; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 12:261-13:288; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 7:156-8:171; Haynes Tr. 1019:10-1022:2, 1033:17-1034:3).

The ARES Coalition suggests that, if the Commission favors a demand ratchet, a Declining Factor Demand Determination ("DFDD") should be used. The DFDD is a complex demand ratchet, with seasonal factors and declining six-month weighted averages. The evidence does not show that this complex design better reflects ComEd's costs, and it is difficult to understand and cannot be billed. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 14:304-10). Consequently, it should be rejected in favor of ComEd's proposed annual demand ratchet.

If the Commission addresses ComEd's proposed annual demand ratchet at this time, the Commission should adopt ComEd's demand ratchet, as offered by ComEd. The ARES Coalition's and BOMA's arguments should be rejected. ComEd's proposed replacement language is found in Appendix A.

b. Definition of Billing Demand in Rate RCDS

Though the Order does not address billing demand definition, the ARES Coalition states that ComEd should be required to use the same billing demand definition in its delivery services tariffs that it uses for its bundled services tariffs (ARES BoE at 57-58).

ComEd's Rate RCDS uses the correct definition of billing demand. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 33:756-34:789). For all but a small percentage of RCDS customers (less than one percent), monthly billing demand is derived from the single highest 30-minute demand, which in fact is identical to bundled service billing demand. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 33:759-66, 34:770-72). A monthly demand calculated by using an average of the three highest 30-minute demands is necessarily lower than the single highest peak. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 34:767-81). It is appropriate to use a single monthly peak for smaller non-residential customers for whom distribution is important, to ensure that the charges accurately reflect the costs imposed on ComEd's distribution system. In contrast, the vast majority of costs to serve Rider 6L - Large General Service ("Rider 6L") customers relate to generation, not distribution. Therefore, as ComEd explained, for the small percentage of customers taking service under Rider 6L, a monthly billing demand obtained by averaging the three highest 30-minutes demands, rather than the single highest 30-minute demand, is appropriate. (*Id.*)

ComEd's definition of billing demand as set forth in Rate RCDS should be adopted, and the ARES Coalition's arguments rejected. ComEd's proposed replacement language is found in Appendix A.

c. Impact on CTCs

Though the Order does not address issues relating to non-residential customers, the ARES Coalition nevertheless asserts that the Commission should discuss the impact of ComEd's proposed delivery services on CTCs at this time. The ARES Coalition contends that, even if ComEd receives no additional revenue as a result of its proposals, the Commission should be concerned about the portion of ComEd's revenue that is attributable to CTCs as compared with the portion that is attributable to the delivery services revenue requirement. (ARES BoE at 58-

60; ARES Exc. Order at 158-160). The ARES Coalition further asserts that, in most cases, CTCs will be negative. (*Id*.) Though BOMA did not file a Brief on Exceptions, it claims in the ARES Exceptions Order that customers with CTCs at or near zero, and those affected by rate design changes, will experience a reduction in savings. (ARES Exc. Order at 159-60).

In fact, the effect on total customer payments that the ARES Coalition and BOMA assert will occur because of ComEd's proposed increase in the revenue requirement is sharply limited because of CTC offsets. The evidence shows that even with the delivery services charges proposed in ComEd's direct case and with the current market values for the "Period A" under approved Rider PPO, customer classes and groups comprising well over 90% of ComEd's non-residential customers will be in customer classes or groups that have positive CTCs, so that any proposed increases in delivery services collections will *in toto* be offset by reductions in their CTCs. Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 6:126-30, 7:143-46, 40:886-41:904, Att. G. For such classes and groups, any proposed increases in delivery services revenues will *in toto* be offset by reductions in CTCs. As Arlene Juracek explained:

> [A] substantial portion of the increase in ComEd's revenue requirement will have no effect on total charges to delivery services customers. It will simply decrease, or eliminate, ComEd's collection of monies through CTCs applicable to delivery services customers. In essence, to this extent, the increase in the costs of providing delivery services is being funded by reductions in ComEd's stranded cost recovery.

(Juracek Dir., ComEd Ex. 1.0, pp. 20:528-21:533).

Claims of "rate shock" are, quite simply, unrealistic and contrary to the evidence. The record shows that widespread loss of savings is unlikely under ComEd's proposal. Current forward market prices yield similar if not even more favorable results in terms of positive CTCs. (Juracek Sur., ComEd Ex. 41.0, pp. 4:79-81, 13:319-322, 23:538-24:559, ComEd Exs. 41.2, 41.3, 41.4, 41.5). A positive CTC means that the customer, group, or class is receiving the full

mitigation factor under the CTC formula. Mitigation factors are currently eight percent of the *entire bundled rate* for non-residential customers and increase to ten percent on January 1, 2003 (subject to a 0.5 cents/kWh minimum). Customer savings opportunities have never been greater.

The ARES next attempts to misdirect the Commission by focusing on the fact that CTCs will end by January 1, 2007. The Commission should not be distracted by the ARES Coalition's diversions. Issues concerning what ComEd's rates should be at the end of the mandatory transition period are to be considered in ComEd's 2005 rate case, and are inappropriate for consideration in this Docket. The Commission's order in this proceeding, as in all contested rate cases, must be based exclusively on the evidence in the record. 220 ILCS 5/10-103, 10-201(e)(iv); *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 201, 227, 555 N.E.2d 693, 697, 709 (1989) ("*BPI 1989*"). The Commission must set ComEd's rates in accordance with its costs to provide delivery services, which have been demonstrated to be reasonable and appropriate.

The ARES Coalition's and BOMA's criticisms relating to refunctionalization and rate design issues are similarly without merit, and are addressed elsewhere. Arguments relating to "refunctionalization" of costs from supply or generation functions to delivery services are addressed in Sections II.C.2, II.D.3.a, and II.D.3.b of this Reply Brief on Exceptions. Though BOMA claims that rate design changes will result in an increase in a customer's delivery services rates without a corresponding CTC offset, it provides no examples of such a situation. The reasonableness and appropriateness of ComEd's specific proposed rate design changes are addressed in the applicable sections of this brief.

If the Commission elects to consider the impact of ComEd's proposals on non-residential customers, the evidence overwhelmingly demonstrates that ComEd's proposals should be

approved, and the ARES Coalition's and BOMA's criticisms rejected. ComEd's proposed replacement language is found in Appendix A.

d. Generation Facilities Under Rate RCDS

Although not discussed in its Brief on Exceptions, Midwest's attached exceptions order contains extensive language adopting Midwest's own proposal for "production credits" as a means to reduce delivery rates applicable to IPPs. ComEd extensively discussed this proposal in its Initial and Reply Briefs and also demonstrated why the record supported ComEd's proposal to establish accurate, individually calculated distribution facilities charges to compensate utilities for the real and often quite significant distribution facilities that generators use. These arguments need not be repeated here. Should the Commission determine to adopt a revised rate design for IPPs and other extremely high-voltage load customers, it should adopt the compromise design presented by ComEd, which the record shows is just and reasonable. (*See* ComEd Init. Br. at 112-16; ComEd Reply Br. at 76-80 (citing and summarizing the evidence)). The appropriate findings for this proposal are contained in ComEd's original Proposed Order, filed on December 28, 2001. ComEd's proposed replacement language is found in Appendix A.

8. Rate HVDS

ComEd has proposed a new High Voltage Delivery Services ("HVDS") credit for delivery services customer load served at 69,000 volts and above. Though Rider HVDS does not impact residential customers, the ARES Coalition nevertheless asks that the Commission address ComEd's proposed HVDS credit at this time, asserting that it discriminates against the majority of customers who are ineligible for the credit. (ARES BoE at 62-63; ARES Exc. Order at 160-164). BOMA, though not filing a substantive Brief on Exceptions, claims that ComEd's proposed HVDS credit would either create rate shock or harm competition. (ARES Exc. Order at 161-64).

ComEd's proposed HVDS credit is reasonable and appropriate, as demonstrated by the evidentiary record. ComEd's proposal provides a credit per-kW for the load served from distribution lines which enter the customer's premises at a voltage of 69,000 volts or higher. The credit reflects the fact that, because there are fewer distribution facilities required, the costs ComEd incurs to serve these customers are generally lower on a per-kW basis than for other customers that are served at lower voltages. (Clair-Crumrine Dir., ComEd Ex. 12.0, pp. 32:735 - 33:759).

The proposed HVDS credit dramatically improves the allocation of costs in accordance with cost causation by eliminating cross subsidies flowing from high voltage customers to other customers. (*E.g.*, Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 9:211-15, 32:735-33:759; Swan Dir., DOE Ex. 1.0 CR, pp. 3:40-44, 12:240-272; Schink Reb., Midwest Generation Ex. 5.0, pp. 3:52-54, 10:215-12:254). Thus, the DOE and Midwest Generation support ComEd's proposal. ComEd's proposed HVDS credit is appropriately based on marginal cost principles. (Alongi-Kelly Dir., ComEd Ex. 13.0, Atts. C, N; Makholm Sur., ComEd Ex. 55.0, pp. 15:341-16:365). If the Commission chooses to use an embedded cost methodology, the Commission should implement a credit using ComEd's embedded cost of service study. (Heintz Reb., ComEd Ex. 33.0). ComEd has provided an embedded calculation of HVDS credit reflecting the correct methodology. (Alongi-Kelly Reb., ComEd Ex. 32.0, Att. G). However, significantly, no party recommends that the credit be based on embedded costs. Even the IIEC, which generally advocates embedded cost ratemaking in this proceeding, and proposes a phase-in period for the credit, also supports the HVDS credit as revised by ComEd in its surrebuttal testimony, using marginal cost principles. (Alongi-Kelly Sur., ComEd Ex. 50.0 CR, pp. 9:174-10:193 and Att. B; Chalfant Reb., IIEC Ex. 4.0 CR, p. 13:1-10; Chalfant, Tr. 2535:19-2536:6).

The opposition to the HVDS credit comes from parties that benefit directly or indirectly from the existing cross-subsidies and, far more importantly, is not grounded in any valid objection. (*E.g.*, Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 20:454-22:501, 24:534-25:559, 26:590-27:611, 28:628-35; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 2:28-3:64; Swan Reb., DOE Ex. 2.0 CR, pp. 22:508-31:724). ComEd's proposed HVDS credit is fully supported by the record and comports with the requirements of the Act. The proposed credit (as revised) eliminates inefficiencies and cross-subsidies, and should be adopted.

The ARES Coalition recommends that the rate design of ComEd's bundled service and delivery services be more comparable, suggesting that the Commission initiate a cooperative process for that purpose. The ARES Coalition's new-found concern for continuity between delivery services offerings and bundled service is belied by their position taken in the uniformity proceeding. In dismissing comparability between bundled services and delivery services tariffs as irrelevant, NewEnergy stated, "Delivery services are not like bundled services. They are uniquely different and the reasons therefore are obvious." (Docket 00-0494, NewEnergy/IIEC Reply Brief, January 26, 2001, p. 26). Given the uniqueness of the services being offered, the need for differences in rate design should be even more evident. ComEd's proposed replacement language is found in Appendix A.

a. Eligibility

No party has shown that a voltage-based credit that accurately reflects cost of service is improper, nor has any party effectively disputed the fact that ComEd's costs to serve customers taking service at 69 kV and above are generally lower on a per-kW basis than for customers served at lower voltages. Rather, the ARES Coalition asserts that, if ComEd sets rates based upon voltage levels, ComEd should develop a full set of voltage-based rates. (ARES BoE at 63). ComEd demonstrated that any argument to have a new smaller high-voltage credit for customers

served at 34 kV is misguided and erroneous in terms of both engineering and ratemaking. (*E.g.*, Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 21:463-22:501; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 2:28-3:64). The ARES Coalition's new proposal for a full set of voltage-based rates is even more significantly flawed, and lacks any evidentiary support. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 22:502-23:520; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, p. 17:382-88). Further, while each contested proceeding must be decided exclusively upon the evidence in that proceeding, the Commission rejected the same proposal in Docket 99-0117 for a variety of reasons. *Commonwealth Edison Company*, Docket No. 99-0117, pp. 50-51 (Order August 26, 1999). Finally, the ARES Coalition's attempts in this Docket to impose requirements on ComEd concerning ComEd's petition and presentation of evidence in its next rate case is irrelevant to these proceedings, and is inappropriate, and should be rejected. ComEd's proposed replacement language is found in Appendix A.

b. Calculation of Credit

The ARES Coalition criticizes the HVDS credit design and calculation. (ARES BoE at 63-64). ComEd has shown its HVDS credit design to be reasonable and appropriate. Identifying each customer that could conceivably be entitled to a credit could not be accomplished without performing a system-wide site by site engineering analysis. In addition, such a proposal would encourage voltage-shopping, creating cross-subsidies by increasing costs to serve a customer at the customer's desired voltage, even when that is not the least-cost means of serving the customer. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 21:472-22:501).

ComEd correctly calculated its proposed HVDS credit. The ARES Coalition's criticism is based solely on the fact that ComEd recalculated the size of the Rider HVDS credit during the course of these proceedings following the loss of a customer. It should not be surprising that a change in the status of ComEd's largest customer had a significant impact on the data, requiring

recalculation of the creidt. The revised proposed HVDS credit has been shown to be correctly calculated, including ComEd's use of maximum demands to allocate costs. (Alongi-Kelly Sur., ComEd Ex. 50.0 CR, Att. B; Alongi-Kelly Tr. 1299:16-1302:17; Alongi-Kelly Sur., ComEd Ex. 50.0 CR, Att. B). All the arguments to the contrary are erroneous. (Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 4:66-69, 8:163-64, 25:550-51, 45:989-98, Att. N, and ComEd Ex. 13.3; Alongi-Kelly Reb., ComEd Ex. 32.0, pp. 20:419-21:432; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 25:556-59, 26:590-93; Alongi-Kelly Sur., ComEd Ex. 50.0 CR, pp. 7:135-10:193 and Att. B; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 3:56-59, 3:63-64; Swan Reb., DOE Ex. 2.0 CR, pp. 22:508-23:541; Chalfant Reb., IIEC Ex. 4.0 CR, p. 13:1-10; Chalfant, Tr. 2535:19-2536:6). ComEd's proposed replacement language is found in Appendix A.

c. Allocation of Costs to Other Classes

The ARES Coalition argues that the approval of Rider HVDS would have a significant adverse impact on many customers currently taking their electric power and energy from an alternate supplier, as well as entities that may wish to enter the competitive environment. (ARES BoE at 64-65).

ComEd designed and calculated the proposed HVDS credit in accordance with cost causation principles, leading to a credit that is appropriately revenue-neutral. *See* the overview to Section II.G.2. Though it should come as no surprise that customers who have benefited from subsidies in the past will experience higher rates when those subsidies are reduced or eliminated, that is no reason to continue the subsidies. Any suggestion that ComEd's rate design for the HVDS credit and its calculation of its impact on other charges might have improperly shifted costs to other customers is disingenuous, unsupported, and false. (Alongi-Kelly Dir., ComEd Ex. 13.0 CR, pp. 25:550-51, 27:597-28:602, 28:605-13, 34:755-35:762, 35:766-78; Alongi-Kelly Reb., ComEd Ex. 32.0, pp. 17:339-20:418; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp.

24:534-25:559). The Commission should reject any reliance on the ARES Coalition's customer impact studies, which ComEd proved are tiny, biased, and based on unrealistic market values. (ComEd Init. Br. at 32-33). ComEd's proposed replacement language is found in Appendix A.

e. Adoption Prior to Bundled Rate Tariff Change

The ARES Coalition claims that the voltage level discounts under Rider HVDS would cause a needless imbalance and lack of comparability between bundled services and delivery services, and requests that ComEd be directed to prepare a full set of voltage-based rates for the 2005 rate case. (ARES BoE at 65-66). The reality is that there are and will be differences between bundled rate design and delivery services rate design, but that is no reason to ignore unfair cross-subsidies in delivery services rates. Subsidies in delivery services can be addressed now, while similar problems in bundled rates cannot. The evidence supporting ComEd's proposed Rider HVDS, and the reasons for rejecting the ARES Coalition's request for a full set of voltage-based rates, have been previously discussed. *See* Section II.G. and II.G.a, *infra*. ComEd's proposed replacement language is found in Appendix A.

9. Rider 25

ComEd has not proposed any changes to Rider 25 in its petition in this Docket. However, the ARES Coalition and BOMA (through the ARES Exceptions Order) assert that Rider 25 has been a barrier to competition in the Chicago Loop because Rider 25 buildings must pay a demand charge under Rate RCDS, and further allege that ComEd's proposed rates will adversely affect Rider 25 customers. (ARES BoE at 69-71; ARES Exc. Order at 181-183). The ARES Coalition requests that ComEd be required to make the following information available to Rider 25 customers and RESs: (1) Rider 25 customers' monthly energy consumption, separated by space heat energy (kWh) consumption versus non-space heat energy consumption and

(2) additional billing demand (kW) from the space heat meters that the customer would have been charged if the customer were taking service under Rate RCDS (also proposed by BOMA). (ARES BoE at 71; ARES Exc. Order at 181-183). Though BOMA has not submitted a substantive Brief on Exceptions, BOMA proposes changes to the rate design of Rate RCDS or, alternatively, to Rider 25, through the ARES Exceptions Order. (ARES Exc. Order at 181-183).

ComEd's delivery services rate design appropriately treats electric space heating customers served under Rider 25. Contrary to the claims of the ARES Coalition and BOMA, Rider 25 customers have not been excluded from the competitive marketplace. They are eligible to participate in open access in the same manner as are other non-residential customers. The demand charge under Rate RCDS paid by buildings serving Rider 25 customers represents ComEd's costs in providing jurisdictional delivery services. As with other eligible customers, ComEd is to offer Rider 25 customers the option to take delivery services at rates based on the actual costs of the delivery services (plus any other lawful charges), not at below-cost rates artificially set below bundled rates. (220 ILCS 5/16-108(c); O'Connor/Spilky Dir., ARES Ex. 1.0, p. 35:790-93). All customers are free to choose a bundled rate for which they are eligible if that rate produces more savings than choosing to take delivery services and buy their electric power and energy on the market. Rider 25 customers are, in fact, participating in the competitive environment and receiving the benefits that the open access legislation was intended to provide. (*See* ComEd Init. Br. at 136).

ComEd's proposed increase in jurisdictional delivery services rates preserves and, in fact, improves Rider 25 customers' opportunity for savings. Market prices provided by the IIEC revealed that the Rider 25 Space Heating class will have a positive CTC (0.607 cents/kWh) (Juracek Reb., ComEd Ex. 20.0, pp. 19:475-20:486; ComEd Ex. 20.2), which will offset any

increase in jurisdicitonal delivery services charges (Juracek Sur., ComEd Ex. 41.0, p. 23:535-42). An update to the CTC calculations to reflect both more recent market values and ComEd's full transmission filing request (later dismissed by the FERC) (Juracek Sur., ComEd Exs. 41.0, 41.2, 41.3, 41.4, and 41.5), demonstrated that CTCs have actually increased significantly. (Juracek Sur., ComEd Ex. 41.0, p. 23:542-45). Under ComEd's proposals, not only will Rider 25 customers continue to participate in the open access system, but they will have greater opportunities for savings.

The ARES Coalition's suggestion that ComEd be required to provide Rider 25 customers and RESs with additional billing information is an obvious attempt to force ComEd to do the work of the RES. The ARES Coalition admits as much in describing its proposal as a means to "assist ARES in simplifying the analytical tasks required to assess and price the delivery services rates for Rider 25 customers." (ARES BoE at 71). By obtaining from a Rider 25 customer its past bills, a RES has at its disposal all of the information necessary to evaluate a Rider 25 customer's pricing opportunities. (O'Connor/Spilky, Tr. 783:14-784:3). The ARES Coalition's argument that ComEd should be required to separate Rider 25 customers' space heat energy consumption from non-space heat energy consumption on a monthly basis is unnecessary and unsupported by any evidence in the record.[†]

BOMA's proposal to modify the Rate RCDS rate design to mirror the bundled rate or, alternatively, to permit Rider 25 customers to take competitive services through its non-Rider 25 meters (ARES Exc. Order at 181-183), is unnecessary, ill-advised, and illegal. Rider 25, which involves the sale and delivery of energy as a bundled service, contains certain energy advantages

[†] Though the ARES Coalition uses the phrase "at a minimum" in describing their request that ComEd provide RESs with additional billing information, the ARES Coalition does not appear to be asking that any change be made to Rider 25. Certainly the ARES Coalition has not specified, much less supported, any change.

that cannot be realized through Rate RCDS, which does not provide for the sale of energy. The fact that tariffs involving the sale of electricity may provide certain economic advantages, such as lower rates during non-summer months when demand on ComEd's distribution system is reduced, does not warrant a change to either tariff. ComEd has demonstrated that it properly set delivery rates for both Rider 25 customers and for other customers, based upon their respective costs of service. Lowering the delivery services rate in Rate RCDS, as BOMA suggests, would either deny the utility its right to cost based rates and full cost recovery, 220 ILCS 5/16-108(c), and/or inappropriately increase the delivery rate to other customers, producing inefficient cross-subsidies. (Juracek Reb., ComEd Ex. 20.0, p. 35:825-36).

BOMA's alternative proposal to modify Rider 25, a bundled rate, is contrary to the Act. ComEd's petition in this Docket has not proposed any change to Rider 25. (See Petition of Commonwealth Edison Company and Attachment A thereto). By seeking changes to certain of its delivery services tariffs, ComEd's other tariffs are not subject to modification, as BOMA is attempting to do. Moreover, BOMA's contention that Rider 25 bundled customers should be permitted to take delivery services is wrong as a matter of law. Bundled rates and rate design, such as Rider 25, are "frozen" and cannot be changed to the extent provided in detail by the Act. 220 ILCS 5/16-111(a). Changing the terms and conditions of Rider 25 as BOMA proposes is in conflict with the Act in several respects, and must be rejected.

Interestingly, and perhaps recognizing the fact that ComEd's tariffs appropriately price the services being offered, BOMA does even suggest that the Commission accept its alternative proposals to modify Rate RCDS or Rider 25. (ARES Exc. Order at 182-83). The Commission should approve ComEd's proposed delivery services rates for Rider 25 customers, and should

reject BOMA's and the ARES Coalition's arguments regarding Rider 25. ComEd's proposed replacement language is found in Appendix A.

III.

Terms and Conditions Issues

A. SBO Credit Eligibility (Customers With Past Due Bundled Service Balances)

The Order properly accepts, as reasonable and appropriate, ComEd's revised proposal (modified based on Staff's direct testimony) that customers with past due bundled services balances owed to ComEd be ineligible to be placed on the Rider SBO - Single Bill Option ("Rider SBO") and ineligible to receive the SBO credit. (Order at 140). Customers with legitimate billing disputes remain eligible for the SBO and the associated credit at all times. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 40:911-42:957).

ComEd demonstrated the significant costs associated with dual billing, which no party contradicted, and the reasons for limiting SBO eligibility. These include, but are not limited to, the immense practical problems and costs of complying with the Commission's ruling in Docket 00-0494, through either a manual or automated process; preserving ComEd's right to take credit action against delinquent customers, which the SBO credit would effectively eliminate for five months each year while, at the same time, a RES would be able to drop a customer at any time and effectively shift all financial risk to ComEd; and complications involving deferred payment arrangements, just to name a few. (Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 34:779 - 37:862; Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 41:941 - 42:957; Alongi-Kelly Reb., ComEd Ex. 32.0, Att. F, n.3).

GCI and the ARES Coalition, in their respective briefs on exception, contend that the Order imposes collections costs on prospective delivery services customers, and is inconsistent

with the Commission's findings in Docket 00-0494. (GCI BoE at 56-57; ARES BoE at 72; Replacement Language, p. 185). These same parties assert that the Order is anti-competitive. (GCI BoE at 56-57; ARES BoE at 71-72). These criticisms of the Order are without merit and should be rejected.

Claims of anti-competitiveness and allegations that the Order imposes collections costs on prospective delivery services customers are misplaced. Contrary to these parties' assertions (including GCI's misguided attempt to apply transmission issues to SBO eligibility (GCI BoE at 56)), there is no barrier to customers' choice of alternative electric suppliers. Under ComEd's revised proposal, as accepted by the Order, customers remain eligible to take delivery services from a RES even when a past due bundled service balance is owed to ComEd. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 40:911-42:957). In addition, the selected RES may place the customer on the SBO as soon as the past due bundled services balance is paid in full. (*Id*.) Finally, the anti-competitive rhetoric is further exposed as such by the fact that, even with the current inflated embedded cost-based SBO credit, whereby the SBO credit grossly exceeds any ComEd savings, RESs have put only approximately 5% of delivery services customers on the SBO. (Clair-Crumrine, Tr. 1119:19-1120:3).

The ARES Coalition next claims that the Order is inconsistent with the Commission's findings in the uniformity proceeding, Docket No. 00-0494. (ARES BoE at 72). In that Docket, the Commission found that a RES is not required to place bundled services charges owed by the customer to ComEd on the single bill provided by the RES to the customer. The Commission did not prohibit ComEd from collecting the past due bundled service balance before permitting a RES to place the customer on Rider SBO. *Illinois Commerce Commission, On Its Own Motion,* Docket 00-0494, March 21, 2001, pp. 15-16. Under the Order, ComEd will continue to bill

customers for past due bundled services balances owed to ComEd and collect from customers any monies owed to the Company. The Order's findings and conclusions are consistent with the Commission's prior order.

ComEd's suggested modifications reflected in ComEd's Brief on Exceptions and Appendix A, clarifying the Commission's Analysis and Conclusions (ComEd BoE at 69; ComEd Exc. at 147-48), should be accepted and GCI's and the ARES Coalition's exceptions should be rejected.

B. Enrollment Issues

1. Electronic Signatures

The Order rejected ComEd's language stating that it has not been demonstrated, and should not be decided by the Commission at this time, whether, and under what circumstances, internet enrollments (electronically signed Letters of Agency) meet all of the stated requirements of the state and federal electronic signature acts as well as Section 2EE of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2EE. (Order at 141-42). The Order instead adopted MidAmerican's proposal that the Commission initiate a workshop process to resolve issues surrounding the use of electronic signatures. (*Id*.) The Order further indicated that the parties were to begin the workshop process "with the understanding that they should arrive at a process to implement electronic signatures." (*Id*.)

Staff, the ARES Coalition, GCI[†], NEMA, and Nicor Energy, in their respective Briefs on Exception, contend that the Order should be revised to specifically find that use of electronic signatures by an energy supplier to enroll customers is consistent with state and federal statutes. (Staff BoE at 30-34; ARES BoE at 72; ARES Exc. Order at 185-188; GCI BoE at 57-59; NEMA

[†] GCI placed its discussion of electronic signatures in III.E - General Account Agency Issues. However, for consistency with the remaining parties, GCI's remarks will be addressed in this section, III.B.1.

BoE at 2-4; Nicor Energy BoE at 4-7). As discussed at length in ComEd's Brief on Exceptions, it is not clear whether, and under what circumstances, an electronic signature may lawfully be used in lieu of a "wet" signature on a Letter of Authorization ("LOA") to enroll a customer with a new supplier of electric power and energy in accordance with Section 2EE of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2EE ("Section 2EE") and state and federal statutes regarding electronic signatures. (Electronic Commerce Security Act, 5 ILCS 175/1-101, *et seq.*; Electronic Signatures in Global and National Commerce Act, S. 761, Pub. L. 106-229, 114 Stat. 464, Section 101(c) (June 30, 2000)). (ComEd BoE at 70-73; ComEd Exc. at 148-50). ComEd will not repeat all of those arguments here. However, it cannot be overemphasized that ComEd should not face legal or business risks as a result of a RES' decision to rely on an electronically signed LOA. ComEd believes that it is only just and reasonable, therefore, that any arrangements that are made for a RES' use of electronically signed LOAs should adequately protect ComEd from any risks resulting from the RES' decision to do so.

NEMA and Nicor Energy assert that a finding that electronic enrollment for electric power and energy supply is permissible under state and federal law is consistent with the Commission's prior holding in the *Nicor* case, Docket Nos. 00-0620 and 00-0621. (Nicor Energy BoE at 5; NEMA BoE at 3). This argument must be rejected, for three distinct reasons. First, in point of fact, Section 2EE itself applies only to electric service providers, and not to suppliers of gas energy. Consequently, those dockets did not involve Section 2EE and did not address the question of internet enrollment for a customer's switch of its electric power and energy supplier. (ARES Exc. Order at 187). Second, even if the *Nicor* case did address the topic of electronic signatures for a customer's supplier of electric power and energy, which it does not, Commission's decisions are neither legal precedents nor *res judicata*. 220 ILCS 5/10-103, (*e.g.*,

United Cities Gas Co. v. Illinois Commerce Comm'n, 163 Ill. 2d 1, 22-23, 643 N.E.2d 719, 729 (1994); *Mississippi River Fuel Corp. v. Illinois Commerce Comm'n*, 1 Ill. 2d 509, 513, 116 N.E.2d 394, 396-97 (1953)). The Commission must make its decisions based strictly upon the evidence presented in the record in the current proceeding. *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 201, 227, 555 N.E.2d 693, 697, 709 (1989). Third, and perhaps most significant, the question at hand is a legal, rather than a factual, issue. Commission decisions regarding legal issues are not presumed to be valid, and a Commission order is subject to reversal if it is contrary to law. 220 ILCS 5/10-201(e)(iv)(D); *Citizens*, 166 Ill. 2d at 120-21, 651 N.E.2d at 1094-95; *BPI*, 136 Ill. 2d at 204, 240, 555 N.E.2d at 698, 715. NEMA's and Nicor Energy's proposals should be rejected.

Aside from the question regarding the legality of the use of an electronic signature for enrollment purposes, Nicor and GCI raised additional concerns regarding the use of electronic signatures, pointing out that both the state and federal electronic signature statutes require verification of electronic signatures. (Nicor Energy BoE at 7; GCI BoE at 59). GCI states that the "internet marketing is rife with opportunities for fraud." (GCI BoE at 59). The means by which electronic signatures would be implemented and verified is therefore of particular importance, yet no party proposed any rules to ensure that a signature received is unique to the customer to whom it is attributed, nor proposed any guidelines for implementation. This is yet another example of the complexities surrounding electronic signatures, demonstrating once again why the Commission should not rush to judgment regarding the use of internet enrollments in the context of electric power and energy supply.

Nicor Energy asserts that wet signatures offer the biggest hurdle for competitive suppliers to offer savings to residential and small commercial customers, and that the mere existence of

state and federal electronic signature statutes provides evidence that electronic signatures are widely accepted. (Nicor Energy BoE at 4-5). Whether or not electronic enrollment may be advantageous to certain suppliers is not the issue.[1] (ARES Exc. Order at 185). Nor is the issue whether electronic signatures are permitted for different purposes, or in other states. The only question that the Commission can and should be concerned with is whether, and under what conditions, a supplier may electronically enroll an Illinois customer for supply electric power and energy under Section 2EE and the state and federal electronic signature laws.

Yet, as explained in ComEd's Brief on Exceptions, those questions are properly answered not by the Commission at this time, but by the constitutional officer charged with enforcing Section 2EE -- the Illinois Attorney General. The Illinois Attorney General may, upon request, provide state officers with written opinions upon legal or constitutional questions relating to the duties of such officers. 15 ILCS 205/4. Given the legal issues concerning the use of electronic signatures and the potential exposure to ComEd, ComEd recommends that the Commission make such a request. (ComEd BoE at 71-73; ComEd Exc. at 149-50).

NEMA argues that the Order should be modified to set a timetable for workshops. According to NEMA, workshops should begin 30 days after entry of the Order, and conclude within 90 days after entry of the Order, with electronic signatures to be operational within 120 days after the final order. (NEMA BoE at 3-4). As noted in its Brief on Exceptions, ComEd is amenable to meeting with Staff and other interested parties to discuss issues surrounding electronic signatures. In fact, ComEd will be participating in workshops to discuss issues relating to MidAmerican's desire to implement electronic enrollment (Docket 01-0844), which

[1]Even assuming that electronic signatures are legally permissible, it is not clear that RESs would find internet enrollments cost-effective, given the numerous prerequisites for their use set forth in the federal statute. (Electronic Signatures in Global and National Commerce Act, S. 761, Pub. L. 106-229, 114 Stat. 464, Section 101(c) (June 30, 2000)).

of may overlap the issues in this Docket. However, it is not known under what circumstances electronic signatures are permissible under Section 2EE and the state and federal electronic signature statutes, if at all. In addition, given the numerous prerequisites for use of electronic signatures contained within those three statutes, it is not clear whether the parties will be able agree on a practical process that will result in the lawful use of electronic signatures, despite the parties' best efforts. (ComEd BoE at 71-72). Establishing a strict time table for workshops to conclude and for electronic signatures to be operational is simply not practical. NEMA's proposal should be rejected.

Staff contends that the Order should be revised to require ComEd to amend its tariffs to make clear that customers are permitted to sign up with suppliers offering internet enrollment. Staff fails to identify any ComEd tariff that requires modification, however. There is no reference to the manner in which a customer enrolls with a RES in ComEd tariffs other than specifying that the customer provide "written" authorization to a RES, authorizing the RES to supply the customer with electric power and energy. (Rate RESS, 1st Rev. Sheet No. 163). Such language is consistent with the requirements of Section 2EE, and should not be altered.

The proposals of the parties discussed above should be rejected, and ComEd's replacement language found in ComEd's Exceptions Order should be adopted.

D. Off-Cycle or Non-Standard Switching for Residential Customers

The Order limits off-cycle switching for residential customers to the customer's regularly scheduled meter reading date, with an exception for residential customers on Rider ISS (other than those involved in a "mass drop"), who will be able to switch off-cycle for a fee. (Order at 143). Though the Order expressly finds ComEd's proposal to be reasonable, clarification of ComEd's proposal is required. As explained in ComEd's Brief on Exceptions, ComEd should

not be required to provide off-cycle switching to ISS customers when doing so would interfere with ComEd's normal business operations -- a "mass drop" being one example of circumstances in which ComEd should not be required to provide off-cycle switching to ISS customers. (ComEd BoE at 73-74; ComEd Exc. at 151).

The ARES Coalition submitted replacement language that would seemingly permit all residential customers to elect off-cycle or non-standard switching (ARES Exc. Order at 189-90)[†], asserting that ComEd failed to provide a valid rationale why off-cycle switching should not be offered to residential customers wishing to make an initial selection of service from a RES. However, neither the ARES Coalition nor any other party commented on the Commission's finding in their Brief on Exceptions.

ComEd explained in detail the reasons why switches for residential customers (with the exception of customers on Rider ISS whose off-cycle switch would not interfere with ComEd's normal business practices) must occur on the customer's regularly scheduled meter reading date. (Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 49:1107-50:1123; ComEd BoE at 73-74). Significantly, no party disputes these facts and, as noted by Staff, ComEd's desire to limit off-cycle switching in such a manner is "understandable". (Schlaf Dir., Staff Ex. 10.0, pp. 17:401-18:428). There is no evidence in the record justifying the ARES Coalition's apparent proposal that all residential customers, or even any subset of residential customers (other than those Rider ISS customers previously discussed), be permitted to switch their supplier of electric power and energy off-cycle. The replacement language contained the ARES Exceptions Order should be rejected, and ComEd's replacement language should be adopted. (ComEd Exc. at 151).

[†] The ARES Coalition's proposal is unclear. The "Commission Analysis and Conclusion" replacement language initially suggests that off-cycle switching should be extended to residential customers making an initial selection of service from a RES. However, in the next sentence, without further explanation, the replacement language extends off-cycle switching to all residential customers.

E. General Account Agency Issues

The Order appropriately concludes that ComEd's proposed standardized agency form is reasonable and should be adopted. (Order at 144). With ComEd's proposed modifications found in ComEd's Exceptions Order, the Order accurately summarizes ComEd's position and its responses to the ARES Coalition's contentions. (ComEd BoE at. 74; ComEd Exc. at 152). The ARES Coalition and Staff both take exception to the Order, though for different reasons.

The ARES Coalition, in its Brief on Exceptions, opposes the standardized form, first claiming that it impedes competition by requiring customers desiring to work with agents to submit a form to ComEd before entering into such a relationship. (ARES BoE at 73; ARES Exc. Order at 190). The ARES Coalition further asserts that the standardized agency form should not apply to non-residential customers because of the availability of "safeguards", and because the ARES Coalition is not aware of any agents that have acted in an unauthorized or improper manner on behalf of non-residential customers. (ARES BoE at 73).

The ARES Coalition's typical claims of anti-competitiveness are groundless. The fallacy of the ARES Coalition's claim that requiring a customers to sign the standardized agency form will impede competition is revealed by the fact that agents are already required to provide ComEd with written documentation of the agency relationship, signed by the customer. (Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 20:456-21:462). Yet, ComEd's service territory has experienced the highest level of competition in Illinois. (Juracek Dir., ComEd Ex. 1.0, p. 4:79-99; *E.g.,* Makholm Reb. ComEd Ex. 34.0, pp. 15:359-16:373). ComEd's proposal does not create a new burden on customers or RESs; the only change is that a single form will now be used by all agents in ComEd's service territory. By standardizing the current process, ComEd's proposal actually reduces, rather than increases, overhead by decreasing the burden on all parties that was previously necessary to individually negotiate agency agreements. (Clair-Crumrine

Reb., ComEd Ex. 31.0 CR, p. 47:1059-48:1089; Clair-Crumrine Sur., ComEd Ex. 49.0 CR, pp. 20:456-21:462).

Given the potential risks posed by agents (Staff BoE at 34-35), the Commission should find ways to eliminate potential problems before they occur, rather than passively relying on the complaint process or unspecified "safeguards" to prevent disputes. ComEd is attempting to establish a form that clearly states the customer's acknowledgement of an agent's responsibilities, thereby proactively reducing disputes and protecting the interests of the various parties. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 46:1054-58). Staff notes that the standardized form, proposed by ComEd and approved by the Order, provides customers with relevant information about their use of an account agent. (Staff BoE at 34-35). By providing a clear explanation of the rights and responsibilities of the parties, ComEd's standardized form decreases the administrative burden on the Commission and the expense to the parties that is necessary to resolve disputes, whether the dispute is filed as a formal complaint or takes another form. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 47:1059-48:1089). Because ComEd is not requiring those 8,000 customers already working with agents to sign the standardized agency form, non-residential delivery services customers currently working with agents will be unaffected by the introduction of the standardized agency form. (Clair-Crumrine, Tr. 113:16-115:12). Non-residential customers entering into an agency relationship in the future will benefit from the clear explanation of rights and responsibilities, and will experience no additional burdens. The ARES Coalition's proposal should be rejected.

Staff objects to the Order only with respect to disconnection notices, expressing concern that a customer's agent may not forward notices to the customer and that the customer will first learn of an agent's failure when the customer's service is actually disconnected. Staff therefore

recommends that the Commission adopt its proposal that ComEd provide duplicate disconnection notices directly to customers, with the associated costs to be paid by all delivery services customers. (Staff BoE at 34-35). As Staff acknowledges, the revised standardized agency form proposed by ComEd and adopted by the Order provides an appropriate explanation of the rights and responsibilities as between ComEd, the customer, and the agent. (Schlaf Reb., Staff Ex. 24.0, p. 1:18-20; Schlaf, Tr. 1817:18-22). Staff's proposal unnecessarily interferes in the customer-agent relationship, contravening the customer's express desire that the agent act on behalf of the customer for all matters with ComEd. (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 49:1124-50:1145). In addition, Staff's proposal that all delivery services customers be forced to pay for duplicate disconnection notices sent to only a percentage of customers violates a basic tenet of ratemaking that costs should be borne by the cost-causers. (*Id*.) Staff's proposal and the ARES Coalition's proposal should be rejected, and ComEd's replacement language should be adopted.

F. Value-Added Aggregation Services

The Order appropriately concludes that ComEd's proposal to offer fee-based consulting services is reasonable and should be approved. The Order further finds that, because the services do not involve the marketing of retail electric services, no tariff filing is required. (Order at 145).

Staff and GCI take exception to the Order on this issue. In its Brief on Exceptions, Staff states that it does not know the details of the services without seeing the contracts, and suggests that ComEd's proposed service offering falls into the category of marketing of retail electric service. (Staff BoE at 36). Staff proposes that ComEd file each contract with an affiliate, and ComEd's three largest contracts with non-affiliates, within 30 days of contract signing. (Staff BoE at 36). GCI asserts that there is insufficient evidence for the Commission to make a determination as to whether either ComEd's or Staff's arguments are valid and that the

Commission should therefore refrain from making any decision on ComEd's proposal. (GCI BoE at 60-61).

ComEd has provided sufficient evidence in the record to demonstrate that the proposed service offerings do not involve the marketing of retail electric service, and that no tariff filing is required. ComEd's filing describes three competitive offerings that the Company proposes to offer, all of which can facilitate aggregation: (1) preparing and submitting bulk DASRs from bulk data that contain multiple customers and accounts; (2) offering bulk data on a non-discriminatory basis to competitive providers that offer aggregation of services; and (3) providing targeting consulting services for entities desiring to provide aggregation services. (Clair-Crumrine Dir., ComEd Ex. 12.0 CR, pp. 56:1252-57:1282). The proposed services are not required to be provided under any provision under the Act and, if ComEd ultimately offers such services, it will do so on a voluntary basis.

Staff's objection appears to focus on the third of these service offerings -- targeted consulting services. Staff contends that ComEd's description of targeted consulting services as "include creating a marketing package for entities desiring to provide aggregation services" (Staff BoE at 36) involves marketing of electric service. Staff fundamentally misunderstands ComEd's proposal. As explained by ComEd witnesses Clair and Crumrine:

> …. ComEd did not mean to suggest that it would actually design a marketing plan and materials for an aggregator. Rather, what ComEd had in mind was providing information to an inexperienced market entrant interested in aggregation on what questions to ask, what steps to take in aggregating customers, and what data might be available and useful in that respect.

(Clair-Crumrine Reb., ComEd Ex. 31.0 CR, p. 39:896-900). Such services do not involve the marketing of any retail electric service by ComEd, and therefore do not raise issues under the Affiliate Non-Discrimination Rules or Code of Conduct Rules. Further, Staff's proposal that ComEd be required to file such contracts, while competing providers of similar services are not

subject to such regulatory scrutiny, is inconsistent with the Act. 220 ILCS 5/16-116(b). (Clair-Crumrine Reb., ComEd Ex. 31.0 CR, pp. 37:848-40:909).

GCI indicates that the Commission cannot make a decision whether ComEd's proposed services need any rules or regulations, noting that the Commission may adopt rules and regulations governing the criteria for aggregation of loads utilizing delivery services. (GCI BoE at 60). However, as GCI recognizes in its proposed replacement language to the Order, the proposed services are not related to delivery services. (GCI BoE at 60-61). GCI thereby defeats its own argument. Staff's and GCI's proposals should both be rejected, and ComEd's minor modifications as reflected in ComEd's Exceptions Order should be adopted.

IV.

ARES Attack on "The Thing"

The ARES Coalition argues that the Commission should disregard ComEd's $800 million "lost revenue" analysis, arguing that, ComEd "misled the public and the Commission" when it stated that the costs of remedying the failures of the past would be borne by shareholders. (ARES BoE at 30, 74-75). They contend that, given ComEd's public statements concerning the costs of the two-year recovery program, ComEd should be prohibited from increasing non-residential delivery services rates. (ARES BoE at 16).

The contention that ComEd has misled the public and the Commission is plainly wrong. ComEd explained in its initial brief that, although significant distribution investments have been made and substantial expenses have been incurred to meet service needs of customers, the majority of those expenditures will not be paid by customers for three principal reasons. (ComEd Init. Br. at 31). First, bundled rates are frozen and will not increase during the mandatory transition period. Throughout this period, customers taking bundled service will benefit from the new and improved distribution facilities without any additional cost. (Helwig

Reb., ComEd Ex. 19.0, pp. 4:80-5:91). Second, much of the operating expense was incurred outside the test year. Because these expenses exceeded the amount included in existing rates, ComEd's shareholders bore those expenses, and will never recover them. (Helwig Reb., ComEd Ex. 19.0, pp. 4:80-5:91; Helwig Sur., ComEd Ex. 43.0, pp. 9:204-10:213). Third, many customers taking delivery services will also avoid paying for new investments and additional test year and post-test year expenses because any growth in delivery charges to customers will largely be offset by reductions in CTCs (over 90% of non-residential customers are in classes with positive CTCs), resulting in no net increase in customers' bills. (Helwig Sur., ComEd Ex. 43.0, pp. 9:204-10:213).

The request to disregard ComEd's $800 million lost revenue analysis is inconsistent with the repeated requests by the ARES Coalition for ComEd to explain whether and to what extent its shareholders were bearing the "lion's share" of new distribution expenditures. The calculation was provided in response to these specific inquiries and to efforts by the ARES Coalition to make the subject an issue in this proceeding. Having raised the question and having made arguments based on it, the ARES Coalition cannot now deny ComEd its opportunity to respond.

In summary, while it was not necessary to establish that ComEd shareholders bore the lion's share of distribution costs, ComEd prepared and submitted a rough estimate to show that they were and continue to do so. The estimate shows that, all else being equal, for the 1999-2001 period, shareholders, not customers, absorbed more than $800 million of new costs for the distribution system. (Strobel, Tr. 708:1-21; Juracek, Tr. 3657:5-3658:9). While various questions can be raised about the particulars of the $800 million estimate, there is no basis for disagreement about the basic point. No retail customer paid for increased distribution costs in

1999-2001, because their rates were frozen, legislatively reduced, or set based on a 1997 test year. Nonetheless, there were increased costs, and shareholders shouldered the burden. Although ComEd acknowledges that the rough estimate is based on assumptions, in many ways it is quite conservative, disregarding costs for other years during the mandatory transition period and applying an overstated whole-company sales growth offset, rather than a wires-only revenue growth deduction. (Strobel, Tr. 708:1-709:13).

The Commission should deny the ARES Coalition's request to disregard this direct response to a matter on which the ARES Coalition has made numerous arguments and inquiries in this proceeding. Finally, the Commission should reject the ARES Coalition's argument that non-residential delivery services rates are subject to the statutory base rate "freeze. The Commission has already rejected that position and the briefs submitted by ComEd and by Illinois Power on the question describe in detail the reasons why the ARES Coalition's position is in error.

CONCLUSION

For the foregoing reason, the Order should be entered with the revisions proposed herein and in ComEd's Brief on Exceptions.

Dated: March 4, 2002

Respectfully submitted,

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